

# COMMITTEE HEARINGS COMMITTEE ON THE JUDICIARY

The Special Subcommittee on Bankruptcy and Reorganization of the Committee on the Judiciary will conduct hearings on H. R. 7356, to amend section 75 (a) of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, as amended, at 10 a. m., on Friday, October 9, 1942, room 346, House Office Building.

## COMMITTEE ON PATENTS (Tuesday, October 13, 1942)

The Committee on Patents of the House of Representatives will hold hearings beginning Tuesday, October 13, 1942, at 10 a. m., in the committee room, 1015 House Office Building, on H. R. 7620, a bill to provide for adjusting royalties for the use of inventions for the benefit of the United States, and for other purposes.

## EXECUTIVE COMMUNICATIONS, ETC.

1958. Under clause 2 of rule XXIV, a letter from the Attorney General of the United States transmitting a draft of a proposed bill to amend the Criminal Code so as to punish anyone injuring a party, witness, or juror on account of his having acted as such, was taken from the Speaker's table and referred to the Committee on the Judiciary.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. MAY: Committee on Military Affairs. S. 2442. An act to authorize the Secretary of War to approve a standard design for a service flag and a service lapel button; without amendment (Rept. No. 2518). Referred to the Committee of the Whole House on the state of the Union.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of rule XXII, public bills and a resolution were introduced and severally referred as follows:

By Mr. LEA:

H. R. 7667. A bill to authorize the charging of tolls for the passage or transit of Government traffic over the Golden Gate Bridge; to the Committee on Interstate and Foreign Commerce.

By Mr. LeCOMPTE:

H. R. 7668. A bill to amend the act entitled "An act for the incorporation of the American Legion," as amended, and matters relating thereto; to the Committee on the Judiciary.

By Mr. VOORHIS of California:

H. R. 7669. A bill to provide deferment under the Selective Service Act for men with dependents employed in agriculture; to the Committee on Military Affairs.

By Mr. WELCH:

H. R. 7670. A bill to authorize the charging of tolls for the passage or transit of Government traffic over the Golden Gate Bridge; to the Committee on Interstate and Foreign Commerce.

By Mr. RAMSPECK:

H. Res. 550. Resolution to authorize the Committee on the Civil Service to investigate various activities in the departments and agencies of the Government; to the Committee on Rules.

## PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. McGEHEE introduced a bill (H. R. 7671) for the relief of Capt. Richard Rothwell, United States Marine Corps, which was referred to the Committee on Claims.

## SENATE

THURSDAY, OCTOBER 8, 1942

(Legislative day of Monday, October 5, 1942)

The Senate met at 11 o'clock a. m., on the expiration of the recess.

Rev. Paul V. Yinger, pastor, Cleveland Park Congregational Church, Washington, D. C., offered the following prayer:

*They that wait upon the Lord shall renew their strength; they shall mount up with wings as eagles; they shall run and not be weary; they shall walk and not faint.—Isaiah 40: 29-31.*

Let us pray:

In Thy presence alone, Father of Life, we see the light of truth. Thou art the Creator and the Life Giver. In Thy hands are held the fragments of our little days. We need each morning Thy sustaining strength, and every night Thy renewing spirit.

Until we see ourselves as Thy creatures our years are as grass. Unless Thy love surrounds us, a great dread commands us.

Be to us, then, O God, a bulwark in times of stress, a source of high-encircling courage, a fountain in the heat of the day, and a haven from all false fears.

Keep our minds this day from every partial loyalty. Make us sensitive to every influence of Thy spirit. May the worthy leanings of our hearts find ready expression, by Thy grace.

Hear our words and discern our thoughts, and give us of Thyself. In Christ's name we pray. Amen.

## THE JOURNAL

On request of Mr. BARKLEY, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Wednesday, October 7, 1942, was dispensed with, and the Journal was approved.

## MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States submitting several nominations in the Army was communicated to the Senate by Mr. Miller, one of his secretaries.

## USE OF GOVERNMENTAL SILVER—NOTICE OF HEARING

Mr. MALONEY. Mr. President, as chairman of the Subcommittee on Coinage and Philippine Currency of the Banking and Currency Committee of the Senate, I desire to give notice, through the CONGRESSIONAL RECORD, that I am calling a hearing to consider Senate bill S. 2768, to authorize the use for war purposes of silver held or owned by the United States, to be held on Wednesday, October 14, 1942, in the Banking and Currency Committee room.

This notice is given for the convenience of interested parties who may desire to appear and be heard.

## CALL OF THE ROLL

Mr. HILL. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Alken	Gerry	O'Daniel
Austin	Gillette	O'Mahoney
Bailey	Green	Overton
Ball	Guffey	Pepper
Bankhead	Gurney	Radcliffe
Barbour	Hatch	Reed
Barkley	Hayden	Reynolds
Bilbo	Herring	Rosier
Bone	Hill	Schwartz
Brewster	Holman	Shipstead
Brooks	Johnson, Calif.	Smithers
Brown	Johnson, Colo.	Smith
Bulow	Kilgore	Spencer
Bunker	La Follette	Stewart
Burton	Langer	Taft
Butler	Lee	Thomas, Idaho
Byrd	Lodge	Thomas, Okla.
Capper	Lucas	Thomas, Utah
Caraway	McCarran	Truman
Chandler	McFarland	Tunnell
Chavez	McKellar	Tydings
Clark, Idaho	McNary	Vandenberg
Clark, Mo.	Maloney	Van Nuys
Connally	Maybank	Wagner
Danaher	Mead	Wallgren
Davis	Millikin	Walsh
Downey	Murdock	Wheeler
Doxey	Murray	White
Ellender	Norris	Wiley
George	Nye	Willis

Mr. HILL. I announce that the Senator from Virginia [Mr. GLASS] and the Senator from Delaware [Mr. HUGHES] are absent from the Senate because of illness.

The Senator from Florida [Mr. ANDREWS], the Senator from New York [Mr. MEAD], and the Senator from Georgia [Mr. RUSSELL] are necessarily absent.

Mr. McNARY. I announce that the Senators from New Hampshire [Mr. BRIDGES and Mr. TOBEY] are necessarily absent.

The VICE PRESIDENT. Ninety Senators have answered to their names. A quorum is present.

## APPRAISAL OF ASSETS AND LIABILITIES OF THE COMMODITY CREDIT CORPORATION

The VICE PRESIDENT laid before the Senate a communication from the President of the United States, which, with the accompanying report, was referred to the Committee on Banking and Currency, and the communication was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,  
Washington, October 8, 1942.

MY DEAR MR. PRESIDENT: I have the honor to transmit herewith for the information of the Congress a letter dated September 4, 1942, from the Secretary of the Treasury transmitting, pursuant to the provisions of the act approved March 8, 1938 (52 Stat. 107), as amended, an act to maintain unimpaired the capital of the Commodity Credit Corporation at \$100,000,000 and for other purposes, an appraisal of all the assets and liabilities of the said Corporation as of March 31, 1942. On the basis of such appraisal the Commodity Credit Corporation has deposited in the Treasury the sum of \$27,815,513.68.

During the fiscal year 1938, it was necessary for the Congress to appropriate \$94,285,404.73 to maintain unimpaired the capital of the Commodity Credit Corporation, and it was necessary for the Congress to appropriate for the fiscal years 1939 and 1941 further amounts of \$119,599,918.05 and \$1,637,445.51, respectively. The payment, made by the Corporation in the fiscal year 1940, amounting to \$43,756,731.01, together with the payment for the fiscal year 1942 of \$27,815,513.68, results in net expenditures by the Congress for the last 5 years amounting to \$143,950,523.60.

The policy adopted by the Congress and incorporated in the act approved March 8, 1938, as amended, providing for an annual appraisal of the assets of the Commodity Credit Corporation, makes it possible to include in each annual Budget the expenditures necessary to support the program which the Corporation is engaged upon or the receipts which the Government receives from that activity.

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

HON. HENRY A. WALLACE,

*President of the Senate,*

*Washington, D. C.*

[Attachment.]

#### EXECUTIVE COMMUNICATIONS

The VICE PRESIDENT laid before the Senate the following communications, which were referred as indicated:

**COLLISION CLAIMS, NAVY DEPARTMENT (S. Doc. No. 251)**

A communication from the President of the United States, transmitting an estimate of appropriation to pay claims for damages by collision or damages incident to operation of naval vessels, amounting to \$2,266.99; to the Committee on Appropriations and ordered to be printed.

**DAMAGE CLAIMS, WAR DEPARTMENT (S. Doc. No. 252)**

A communication from the President of the United States, transmitting an estimate of appropriation to pay claims for damages due to military operations, amounting to \$1,567; to the Committee on Appropriations and ordered to be printed.

**DAMAGES TO PRIVATELY OWNED PROPERTY (S. Doc. No. 253)**

A communication from the President of the United States, transmitting estimates of appropriations to pay claims for damages to privately owned property, amounting to \$68,283.50; to the Committee on Appropriations and ordered to be printed.

**JUDGMENTS RENDERED AGAINST THE GOVERNMENT BY DISTRICT COURTS (S. Doc. No. 254)**

A communication from the President of the United States, transmitting, pursuant to law, records of judgments rendered against the Government by United States district courts, amounting to \$11,500.67; to the Committee on Appropriations and ordered to be printed.

**JUDGMENTS RENDERED BY THE COURT OF CLAIMS (S. Doc. No. 255)**

A communication from the President of the United States, transmitting, pursuant to law, a list of judgments rendered by the Court of Claims, amounting to \$322,612.58; to the Committee on Appropriations and ordered to be printed.

**CLAIM ALLOWED BY THE GENERAL ACCOUNTING OFFICE (S. Doc. No. 256)**

A communication from the President of the United States, transmitting, pursuant to

law, an estimate of appropriation for the payment of a claim allowed by the General Accounting Office, amounting to \$3.85; to the Committee on Appropriations and ordered to be printed.

**CLAIMS ALLOWED BY THE GENERAL ACCOUNTING OFFICE: PHILIPPINE TRAVEL PAY (S. Doc. No. 257)**

A communication from the President of the United States, transmitting, pursuant to law, an estimate of appropriation, amounting to \$17,738.86, for the payment of claims allowed by the General Accounting Office relating to certain Philippine travel pay in connection with the War with Spain; to the Committee on Appropriations and ordered to be printed.

**SCHEDULE OF CLAIMS ALLOWED BY THE GENERAL ACCOUNTING OFFICE (S. Doc. No. 258)**

A communication from the President of the United States, transmitting, pursuant to law, a schedule of claims allowed by the General Accounting Office, amounting to \$632,301.58; to the Committee on Appropriations and ordered to be printed.

**SUPPLEMENTAL ESTIMATE, DEPARTMENT OF JUSTICE (S. Doc. No. 259)**

A communication from the President of the United States, transmitting a supplemental estimate of appropriation, fiscal year 1943, for the Department of Justice, amounting to \$225,000; to the Committee on Appropriations and ordered to be printed.

**DEFICIENCY AND SUPPLEMENTAL ESTIMATES, INTERIOR DEPARTMENT (S. Doc. No. 260)**

A communication from the President of the United States, transmitting deficiency and supplemental estimates, fiscal years 1942 and 1943, for the Department of the Interior, amounting to \$11,501,500, together with a draft of a proposed provision pertaining to existing appropriations; to the Committee on Appropriations and ordered to be printed.

**PROPOSED PROVISION RELATING TO EXISTING APPROPRIATIONS, INTERSTATE COMMERCE COMMISSION (S. Doc. No. 261)**

A communication from the President of the United States, transmitting a draft of a proposed provision relating to existing appropriations, fiscal year 1943, for the Interstate Commerce Commission; to the Committee on Appropriations and ordered to be printed.

**SUPPLEMENTAL ESTIMATE, LIBRARY OF CONGRESS (S. Doc. No. 262)**

A communication from the President of the United States, transmitting a supplemental estimate of appropriation for the legislative establishment, Library of Congress, fiscal year 1943, amounting to \$20,000; to the Committee on Appropriations and ordered to be printed.

**PROPOSED PROVISION PERTAINING TO EXISTING APPROPRIATIONS, DEPARTMENT OF COMMERCE (S. Doc. No. 263)**

A communication from the President of the United States, transmitting a draft of a proposed provision pertaining to existing appropriations, Department of Commerce, for the fiscal year ending June 30, 1943; to the Committee on Appropriations and ordered to be printed.

**SUPPLEMENTAL ESTIMATE, TREASURY DEPARTMENT (S. Doc. No. 264)**

A communication from the President of the United States, transmitting a supplemental estimate of appropriation for the Treasury Department, fiscal year 1943, amounting to \$1,200,000; to the Committee on Appropriations and ordered to be printed.

#### PETITIONS

Mr. TYDINGS presented petitions of sundry citizens of the State of Maryland, praying for the enactment of Senate bill 860, to prohibit the sale of alcoholic

liquor and to suppress vice in the vicinity of military camps and naval establishments, which were ordered to lie on the table.

#### NEW YORK CONFERENCE ON TAXATION AND INFLATION—SEVEN-POINT TAX PROGRAM

Mr. LANGER. Mr. President, I ask unanimous consent to have printed in the RECORD and appropriately referred a letter dated at Washington, D. C., October 7, 1942, from Martin Popper, executive secretary of the National Lawyers Guild, and also an enclosure with the letter headed "New York conference on taxation and inflation—Seven-point tax program for victory."

There being no objection, the letter, with its enclosure, was ordered to lie on the table and to be printed in the RECORD, as follows:

NATIONAL LAWYERS GUILD,  
Washington, D. C., October 7, 1942.

DEAR SENATOR: The tax bill introduced by the Senate Finance Committee would soak the poor, benefit the prosperous, and injure production. Instead of recapturing the record-high profits of corporations and adequately taxing incomes and inheritances of the wealthy, the Finance Committee prefers to extract the essential vitamins from the lunch boxes of our production soldiers. At a time when equality of sacrifice is a military necessity for victory, the Finance Committee proposes the most punitive soak-the-poor tax bill in America's history, while favoring the privileged few.

Although the cost of living has risen above 17 percent since January 1, 1941, the Senate Finance Committee proposes to lower the 1941 personal exemptions 20 percent for married couples, 33 1/3 percent for single persons, and 33 1/3 percent for dependents. The meager exemptions under existing law would be cut to submarginal levels—from \$1,500 to \$1,200 for married persons; from \$750 to \$500 for individuals; and from \$400 to \$300 for dependents. The starting income-tax rate of 10 percent would be practically doubled, starting at 19 percent on the first dollar of taxable income. These changes in the regular income tax would add \$885,000,000 in taxes to the income classes of \$2,000. On top of this, the so-called Victory tax, which hits all gross incomes above \$12 a week, would extract an additional \$632,000,000 from those whose average income is \$2,200 or less—based on the Office of Price Administration statistics on 1942 national income. The "gross injustice tax" coupled with the drastic reductions in personal exemptions to submarginal levels would take more than a billion and a half in additional taxes from the low-income groups who can hardly maintain a decent standard of living at present.

Existing income-tax exemptions and dependency credits must not be lowered; the so-called Victory tax, which is a camouflaged sales tax, must be rejected, for such unjust taxation would seriously hamper the war effort by depriving our production soldiers of the calories needed for efficient production.

The proposed taxation on corporate profits is inadequate and should be increased. The tax bill would leave corporations about \$10,000,000,000 after taxes—or more than twice what they had left after taxes in 1939, the last pre-war year.

Special privileges and loopholes should be eliminated and thereby raise another billion in revenue from ability-to-pay sources. All income from Government securities should be taxed, percentage depletion granted oil and mining companies should be eliminated, and mandatory returns should be required.

At a conference on taxation and inflation, held in New York City on September 26, and

attended by several hundred delegates representing bar, labor, civic, and consumer organizations, a seven-point tax program was adopted to raise the billions in revenue needed for victory based on principles which would fit into the pattern of a democracy paying the tax costs of this people's war for survival.

A copy of the program is enclosed. We urge you to adopt the seven-point program advocated by the conference in substitution for the Finance Committee's tax bill.

Respectfully yours,

MARTIN POPPER,  
Executive Secretary,  
National Lawyers Guild.

NEW YORK CONFERENCE ON TAXATION AND INFLATION—SEVEN-POINT TAX PROGRAM FOR VICTORY

One of the key planks in the President's seven-point victory program calls for a fair and equitable tax program to help stabilize the cost of living and raise the billions in tax revenue we need for victory this year.

But a small minority of Congressmen, dominating the congressional committees framing tax legislation, has thus far succeeded in scuttling the democratic ability-to-pay proposals urged by the President. This minority, in betrayal of the public interest, has flatly refused to put an end to special privileges and loopholes in our tax law, has failed to recapture wartime profits, has refused to support sufficiently heavy taxes on the comfortable and upper-bracket incomes, and has instead adopted a soak-the-poor tax policy.

On top of this, poli-tax Senator George of Georgia has produced a so-called Victory tax to hit all incomes above \$12 a week of both married and single taxpayers, regardless of the number of dependents. The 5 percent gross income tax, which has won the approval of the Senate Finance Committee, deserves its more popular name, the "Gross Injustice Tax." Actually, it is a camouflaged sales tax dressed up in income-tax language, which will cast the heaviest burden on those who produce the weapons of war. Such taxation would undermine the standard of living of our production soldiers, impair the morale of the American people, and impede war production. The Victory tax would indeed contribute to victory—victory for the Axis.

The cornerstones of a people's Victory-tax program for America at war should be:

1. Excess war profits should be recaptured by an effective excess-profits tax at the rate of 90 percent on all profits above 4 to 5 percent of invested capital, and a special tax of 72½ percent on profits below 4 to 5 percent of capital and in excess of average 1936-39 profits.
2. Higher rates should be imposed on ordinary income of corporations, above the 45 percent voted by the House and the 40 percent voted by the Senate Finance Committee.
3. Heavy increases should be made in individual income-tax rates, with the present \$1,500 and \$750 exemptions retained, and a \$25,000 ceiling on incomes, after taxes.
4. Special privileges should be abolished which now grant tax shelters to recipients of tax-free interest from governmental securities, which give oil and mining industries unreasonably high depletion allowances, and which provide comfortable and large incomes with an avenue of tax-escape via separate returns.
5. An integrated estate and gift tax system should be adopted, with a single exemption of \$20,000 and a single set of graduated rates drastically increased for all brackets.
6. The demagogic Victory tax which can only contribute to victory for the Axis must be rejected as must be a sales tax or other tax burdens on the already heavily taxed low-income groups.
7. An equitable pay-as-you-earn income tax plan, which rules out the inequitable and

unsound Ruml plan favoring the wealthy, should be adopted by granting to low-income groups exemptions or credits on their 1942 incomes, and commencing on January 1, 1943, a system of withholding at the source the tax on wages, salaries, corporation dividends, and corporation bond interest.

In this desperate war for survival, the rejection of this sound tax program can only serve to give aid and comfort to the enemy. A grave responsibility rests on Congress to see that the new revenue act is fashioned so as to strengthen the unity of our people, to mobilize the maximum production of tanks, ships, and war material, not to retard such production—never forgetting that a production soldier, deprived of sufficient calories by oppressive taxation, cannot effectively produce war materials.

The policy and principles upon which this seven-point tax program are based would fit into the pattern of a democracy paying the tax costs of this people's war for survival. It would fit into the struggle against inflation and the battle to keep the Nation's morale at its highest peak. It would create a powerful instrument for victory.

NATIONAL LAWYERS GUILD.

SEPTEMBER 26, 1942.

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. WALSH, from the Committee on Naval Affairs:

S. 2822. A bill for the relief of William Kovatis; without amendment (Rept. No. 1635).

ENROLLED BILL PRESENTED

Mrs. CARAWAY, from the Committee on Enrolled Bills, reported that on October 7, 1942, that committee presented to the President of the United States the enrolled bill (S. 2584) to permit appointment of White House Police, in accordance with the civil-service laws, from sources outside the Metropolitan and United States Park Police forces.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

(Mr. CLARK of Missouri introduced Senate bill 2837, which was referred to the Committee on the Judiciary, and appears under a separate heading.)

By Mr. TYDINGS:

S. 2838. A bill to place the office of the Secretary of the Territory of Alaska under the classified civil service; to the Committee on Territories and Insular Affairs.

By Mr. REYNOLDS:

S. 2839. A bill for the relief of J. C. Munn; to the Committee on Claims.

By Mr. THOMAS of Idaho:

S. 2840. A bill to provide for the waiver of the payment of premiums on Government life insurance during the period the insured is captured or interned by the enemy; to the Committee on Finance.

By Mr. THOMAS of Oklahoma:

S. 2841. A bill for the relief of W. Cooke; to the Committee on Indian Affairs.

AMENDMENT OF ACT INCORPORATING THE AMERICAN LEGION—EXTENSION OF MEMBERSHIP

Mr. CLARK of Missouri. Mr. President, in 1919 Congress granted a charter to an organization known as the American Legion, composed of veterans of the first World War. Since that time the organization has grown to be the largest and greatest servicemen's organization in the world.

At the recent national convention of the American Legion at Kansas City the organization decided to open its ranks and invite men who had served in the armed forces of the United States in the present war to become members of the organization. For that purpose it is necessary that the Congress amend the charter granted to the Legion in 1919, and on behalf of the American Legion, and as one of the original incorporators of that organization, it gives me pleasure to ask consent to introduce a bill for the purpose.

There being no objection, the bill (S. 2837) to amend the act entitled "An act to incorporate the American Legion," approved September 16, 1919, so as to extend membership eligibility therein to certain American citizens, honorably discharged from the active military or naval forces of the United States, or of some country allied with the United States during World War No. 2, was read twice by its title and referred to the Committee on the Judiciary.

AMENDMENTS TO THE REVENUE ACT OF 1942

Mr. LA FOLLETTE, Mr. OVERTON, Mr. SMITH, and Mr. TAFT each submitted an amendment intended to be proposed by them, respectively, to the bill (H. R. 7378) to provide revenue, and for other purposes, which were severally ordered to lie on the table and to be printed.

LYLE L. BRESSLER

The VICE PRESIDENT laid before the Senate the amendments of the House of Representatives to the bill (S. 174) for the relief of Lyle L. Bressler, which were on page 1, line 6, after "\$124.45," to insert "in full settlement of all claims against the United States", and on the same page, line 6, to strike out "in the payment."

Mr. O'MAHONEY. I move that the Senate concur in the amendments of the House. The amendments are merely technical.

The motion was agreed to.

BAYARD M. ATWOOD

The VICE PRESIDENT laid before the Senate the amendment of the House of Representatives to the bill (S. 2203) for the relief of Bayard M. Atwood, which was, on page 2, line 3, after "1940", to insert a colon and "Provided, That no benefits shall accrue prior to the enactment of this act."

Mr. HAYDEN. I move that the Senate concur in the amendment of the House. The motion was agreed to.

LILLIAN LABAUVE LINNEY

The VICE PRESIDENT laid before the Senate the amendment of the House of Representatives to the bill (S. 2317) for the relief of Lillian LaBauve Linney, which was, on page 1, line 7, to strike out "\$5,000" and insert "\$7,117.50."

Mr. ELLENDER. I move that the Senate disagree to the amendment of the House, request a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Vice President appointed Mr. ELLENDER, Mr. STEWART, and Mr. BREWSTER conferees on the part of the Senate.

#### AMENDMENT OF WOMEN'S ARMY AUXILIARY CORPS ACT

The VICE PRESIDENT laid before the Senate the amendment of the House of Representatives to the bill (S. 2751) to amend the act entitled "An act to establish a Women's Army Auxiliary Corps for service with the Army of the United States," approved May 14, 1942, to create the grade of field director in such corps, to provide for enrolled grades in such corps comparable to the enlisted grades in the Regular Army, to provide pay and allowances for all members of such corps at the same rates as those payable to members of the Regular Army in corresponding grades, and for other purposes.

Mr. REYNOLDS. I move that the Senate disagree to the amendment of the House, request a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Vice President appointed Mr. REYNOLDS, Mr. THOMAS of Utah, Mr. JOHNSON of Colorado, Mr. AUSTIN, and Mr. GURNEY conferees on the part of the Senate.

#### IMPENDING SHORTAGE OF FUEL OIL IN NEW ENGLAND

Mr. LODGE. Mr. President, in September, I addressed a letter to the President of the United States regarding the unification of the petroleum problem. I ask that my letter and the President's reply be printed in the RECORD as a part of my remarks.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

SEPTEMBER 4, 1942.

HON. FRANKLIN D. ROOSEVELT,  
President of the United States,  
The White House, Washington, D. C.

DEAR MR. PRESIDENT: Only the seriousness of the problem would justify me in taking your precious time with a letter, and I would not think of doing so unless the matter about which I write carried such a grave threat to our program for the production of weapons.

I refer to the impending shortage of fuel oil in New England. This shortage will not only threaten the health of all people who must live in a cold-weather climate but it menaces the many industries in this section which need fuel oil in order to manufacture weapons. The seriousness of these two dangers must not be minimized. In studying this question and in conferring with the numerous agencies of the Government having to do with it, I have been led to the conclusion that, while the shortage is real, its effects could be considerably reduced if two principal things were done:

First. Unify the control of this problem under one head instead of distributing the authority, as is now the case, among a number of different Federal agencies.

Second. Institute a Nation-wide rationing or conservation plan so that amounts of fuel oil now being used for nonessential purposes in other parts of the country could be made available to this section.

In order to accomplish this purpose I have drafted legislation which confers additional authority on the Executive. I enclose a copy of the bill and would be deeply obliged to get your reaction.

I recognize that legislative action is slow and that many of the things embodied in this bill could be done by you without legislation. I hope that you will take cognizance of this important matter and act early so as to avert the dangers which threaten New England and which have such grave implications to the Nation as a whole.

With assurances of my esteem and high regard,

Faithfully and respectfully yours,  
H. C. LODGE, Jr.

THE WHITE HOUSE,  
Washington, October 1, 1942.

MY DEAR SENATOR LODGE: I have read with much interest your letter of September 4, and the enclosed copy of S. 2716, a bill to establish a National Petroleum Administration, which you have introduced in the Senate.

I share your view that governmental control and direction of the problem of petroleum supply should be centralized in a single agency. An intensive study has been under way for some time to determine the type of organization best suited to accomplish this objective and so designed as to fit into the over-all pattern of organization of the war agencies. A decision on this matter may be expected within the near future.

Since statutory powers already exist to create, by Executive order, an agency with adequate power and responsibility to deal with the oil problem, I do not think that new legislation in this field is necessary at this time.

Steps have already been taken to ration fuel oil in the States on the Atlantic seaboard and in the Midwest in order to distribute the available supplies equitably among all affected. Affirmative action has also been taken to increase both the production of fuel oil and the ability of our transportation system to move such oil to the areas of shortage.

I have been assured by the agencies that are primarily concerned that there will be adequate fuel-oil supplies for all military and essential industrial requirements, and that all possible measures are being effected to minimize the shortage of fuel oil for civilian consumption.

I appreciate your interest in this matter, and I am glad to have had the opportunity to express to you my views on it.

Sincerely yours,

FRANKLIN D. ROOSEVELT.  
Hon. H. C. LODGE, Jr.,  
United States Senate.

#### THE UNWARRANTED ASSAULT ON AGRICULTURE—ARTICLE BY SENATOR LA FOLLETTE

[Mr. LA FOLLETTE asked and obtained leave to have printed in the RECORD an article entitled "The Unwarranted Assault on Agriculture," written by himself and published in the Progressive of October 5, 1942, which appears in the Appendix.]

#### SENATOR SMATHERS—EDITORIAL FROM THE DAILY WORLD, OF ATLANTIC CITY, N. J.

[Mr. BUNKER asked and obtained leave to have printed in the RECORD an editorial entitled "Senator SMATHERS: Pro and Con—Eight Reasons Why Senator WILLIAM H. SMATHERS Should Be Reelected," published in the Daily World, of Atlantic City, N. J., October 6, 1942, which appears in the Appendix.]

#### STABILIZATION OF THE COST OF LIVING— PRICE OF COTTON

Mr. BANKHEAD. Mr. President, I wish to address myself to the junior Senator from Michigan [Mr. BROWN], and ask him about a matter connected with the recent anti-inflation stabilization bill.

There has been much uncertainty in cotton circles, and among cotton farmers, about the effect of the new law and its administration so far as the price of the cotton which is now coming to market, the present crop, is concerned. Since the passage of the bill the price of cotton has dropped as a result of this uncertainty, based upon reports that the maximum price, or the ceiling, might be reduced, directly or indirectly, and that the parity price might be changed, directly or indirectly.

As a result of the circulation of these reports throughout the Cotton Belt, the price of cotton has dropped about \$2 a bale, which, of course, with a 14,000,000-bale crop, means a \$28,000,000 loss to the cotton farmers, and unless the facts about this matter are established, the drop in the price may continue, with consequent additional loss to the farmers.

During the consideration of the bill we all understood that the maximum prices provided in the act of October 2 were to control. Briefly, but so that the RECORD will show the facts, I wish to point out that section 3 provides that, so far as agricultural commodities are concerned—

No maximum price shall be established or maintained under authority of this act or otherwise \* \* \* below a price which will reflect to the producers of such agricultural commodity, the higher of the following prices: First, parity as determined by the Secretary of Agriculture; second—

The highest price received by such producers for such commodity between January 1, 1942, and September 15, 1942 (adjusted by the Secretary of Agriculture for grade, location, and seasonal differentials).

During the period referred to the price of cotton was above parity, although it is now below parity. The Senator from Michigan was actively in charge of the bill during its consideration. He was in close contact with the administration the whole time the bill was pending before the Senate, and probably has been since, and in order that the matter may be adjusted for the benefit of the public, and especially everyone connected with the cotton business in any way, so that the producers will know what to do about it, I wish to ask the Senator whether there is any intention of trying in any way to reduce the maximum price of cotton or the parity price of cotton.

Mr. BROWN. Mr. President, in the various discussions we have had there was what I considered to be a very strong indication that no movement is contemplated on the part of those in charge of the administration of the act which would justify the decline in prices which occurred on the cotton market during the last 2 or 3 days. I think it was inevitable that markets generally would react unfavorably to the passage of the bill, because the act definitely prevents future increases in prices. That reaction was quite clearly demonstrated upon the various exchanges of the country. But it is my own judgment that, so far as the actual situation is concerned, and so far as concerns the contemplation of those in charge of its administration, those price declines were without justification, and could not be attributed in any way to governmental action.

Furthermore, the parity floor—and I call it a floor when we consider it as a bottom limitation—is unquestionably the law, and so far as I know—and I think I do know—there is nothing contemplated under the so-called highest-price-to-producers clause in the act which would justify these downward movements in the price of cotton.

Mr. BANKHEAD. I should like to ask one further question. As I stated, the Senator was one of the active authors and managers of the bill, and he has been in contact with the departments. In the Senator's judgment, is it safe for the farmers to assume, and to act upon the assumption, that during the present marketing season there will be no reduction in the maximum price of cotton, or in the parity price?

Mr. BROWN. Certainly no such representations were made to me by those who will be in charge of the administration of this bill. I am not in any way trying to prejudge the actions of the economic stabilization chief, but that was the understanding when we passed the bill.

Mr. BANKHEAD. And since?

Mr. BROWN. Yes.

Mr. LANGER. Mr. President, I wish to say in connection with the matter now under discussion that I noticed in the press that yesterday Mr. Byrnes issued an order for the making of loans at only 85 percent of parity on wheat and corn. Perhaps the Senator from Michigan also saw that statement in the press.

Mr. BROWN. I anticipated that such an order would be made. I have not seen it.

Mr. LANGER. The Senator remembers that we discussed the matter of parity in that connection on the Senate floor.

Mr. BROWN. Yes.

Mr. LANGER. As I understand, there is no chance by way of conference with those in charge of the administration of the act of getting the loan provision up to 90 percent.

Mr. BROWN. Oh, yes; I should say there was some chance. Under the bill as it passed both Houses, the President may fix such loans at any figure between 85 and 90 percent of parity. That is a matter entirely discretionary with the President of the United States.

Mr. LANGER. In view of the fact that the Senator from Michigan is a Democrat, and quite close to those in power, I wonder if I could get the Senator to use his good offices to have the loan figure raised. I say that in view of the fact that I received a letter this morning from a farmer named William L. Zimmermann, of Amenla, N. Dak., from which I gather that conditions there seem to be worse than ever. I wonder if the Senator would not use his good efforts and influence along that line.

Mr. BROWN. Mr. President, I may say that I have enough trouble with the farmers in Michigan and do not want to take on the farmers of the Dakotas also. I will say to the Senator from North Dakota that, of course, it was my own view, and I used whatever influence I possessed to bring about a result whereby the President would have discretionary

authority as to making feed loans between 85 and 90 percent. I will say to the Senator that I think, with his persuasive ability, he can certainly present that matter fairly to those in charge in the administration; and if there is anything I can do to assist the Senator, I shall be glad to do so.

Mr. LANGER. Would the Senator accompany me sometime and talk to those in charge of the administration of the matter?

Mr. BROWN. I hope to go back to Michigan to campaign within the next 2 or 3 days, but sometime I shall be glad to assist the Senator from North Dakota.

Mr. LANGER. I thank the Senator very much.

Mr. SMITH. Mr. President, I should like to address a question to the Senator from Michigan [Mr. BROWN]. In view of the discretion lodged with the powers that be, does the Senator have the impression that benefit payments and other payments made to the farmers from the Treasury will be included in parity and, therefore, will be deductible from any maximum price?

Mr. BROWN. That subject, I will say, has been beyond my ken in this matter. It is a matter which, as the Senator from South Carolina knows, came from his Committee on Agriculture and Forestry and not from the Committee on Banking and Currency, and, of course, the Appropriations Committee has considerable to do with it. I myself know of no contemplated changes in the present status. Of course, I am unable to bind anyone in that respect.

Mr. SMITH. The reason I asked the question is that it was reported in the newspapers that an Executive order was issued which provided that benefit payments, such as those made for plantings for certain soil improvements, and so forth, would be included in the maximum price, because such benefit payments were said to be included in parity. I simply wanted to know if the matter was clear to all those who are dealing in wheat and cotton and corn.

Mr. BROWN. I am not a sufficient authority on that subject to give the Senator any assurance which could be binding upon anybody.

Mr. SMITH. I think the main thing which is disturbing the trade is that the authorities are going to calculate all the little checks which are sent to the farmers for benefit payments, and include those payments in the maximum price, which will subtract to that extent from the maximum price.

Mr. BROWN. I should say generally that my understanding is that the present status is to be maintained. The present marketing season is so far advanced that I understand, from talks I have had—and I cannot bind anybody on that precise point—that the present status "as is" is to be maintained.

Mr. SMITH. God grant it may be, but I have my doubts.

#### MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Calloway, one of its reading clerks, announced that the Speaker had affixed his signature to the

following enrolled bills, and they were signed by the Vice President:

S. 97. An act for the relief of the legal guardian of Joy Montgomery, a minor;

S. 103. An act for the relief of Caffey Robertson-Smith, Inc.;

S. 305. An act for the relief of Mrs. Felix Belanger;

S. 317. An act for the relief of Monroe Short;

S. 1033. An act conferring jurisdiction upon the Court of Claims of the United States to hear, examine, adjudicate, and render judgment on the claim of the legal representatives of the estate of Robert Lee Wright;

S. 1143. An act for the relief of Daye Jones;

S. 1216. An act for the relief of Henry (Heinz) Gabriel;

S. 1220. An act for the relief of G. C. Barco and W. G. Knowles;

S. 1853. An act for the relief of the Rock Hill Stone & Gravel Co., of St. Louis, Mo.;

S. 1899. An act for the relief of certain claimants against the United States who suffered property losses as a result of the failure of the Big Porcupine Dam on the Fort Peck project, Montana;

S. 2099. An act for the relief of Mrs. Reita M. Lary;

S. 2190. An act for the relief of Mrs. Marilla C. Gray;

S. 2191. An act for the relief of Clara Wroblewski;

S. 2248. An act to amend the law relating to the care and custody of insane residents of Alaska, and for other purposes;

S. 2264. An act conferring jurisdiction upon the United States District Court for the District of Connecticut to hear, determine, and render judgment upon the claim of James H. Lane;

S. 2273. An act for the relief of Ruth D. and Henry L. Brittingham;

S. 2275. An act to amend section 10 of Public Law No. 360, Seventy-seventh Congress, to grant national service life insurance in the cases of certain Navy or Army flying cadets and aviation students who died as the result of aviation accident in line of duty between October 8, 1940, and June 3, 1941;

S. 2279. An act for the relief of O. R. Maxwell;

S. 2364. An act for the relief of former First Lt. William J. Tepsic, One Hundred and Seventy-sixth Field Artillery;

S. 2420. An act for the relief of Isabelle Fuller;

S. 2461. An act for the relief of Minnie C. Sanders;

S. 2506. An act for the relief of Angela Skeoch;

S. 2551. An act for the relief of Vernon Van Zandt;

S. 2570. An act to provide for the sale by the Superintendent of Documents of copies of certain historical and naval documents printed by the Government Printing Office;

S. 2627. An act to amend the act approved August 27, 1940 (54 Stat. 864), entitled "An act increasing the number of naval aviators in the line of the Regular Navy and Marine Corps, and for other purposes";

S. 2676. An act to provide for medical care and funeral expenses for certain members of the Naval Reserve Officers' Training Corps;

S. 2677. An act to authorize an exchange of land at Mechanicsburg, Pa., between Edgar Eberly and the United States;

S. 2678. An act to amend the act approved March 2, 1933, by suspending the provisions relative to a Navy ration in kind, and for other purposes;

S. 2679. An act to authorize the transportation of dependents and household effects of personnel of the Navy, Marine Corps, Coast Guard, and Coast and Geodetic Survey, incident to secret or confidential orders, and for other purposes;

S. 2682. An act to authorize the Secretary of War to exchange certain lands of the

United States located within the Fort De Russy Military Reservation, Oahu, T. H., for certain land at Barbers Point, Oahu, owned by the Territory of Hawaii;

S. 2685. An act to provide that promotions to higher grades of officers of the Army of the United States, or any components thereof, shall be deemed to have been accepted upon the dates of the orders announcing such promotions, and for other purposes;

S. 2717. An act for the relief of Charles H. Koch;

S. 2731. An act to suspend until June 30, 1945, the running of the statute of limitations applicable to violations of the antitrust laws; and

H. R. 7121. An act to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and acts amendatory thereof and supplementary thereto.

#### REVENUE ACT OF 1942

The Senate resumed the consideration of the bill (H. R. 7378) to provide revenue, and for other purposes.

The VICE PRESIDENT. The pending question is the amendment proposed by the Senator from Ohio [Mr. BURTON] on page 34, line 1, to strike out "before January 1, 1943", and beginning on line 23, page 34, to strike out all down to and including line 16 on page 38.

Mr. AUSTIN. Mr. President, I shall reduce what I have to say so as to be as brief as possible, for my views have been expressed many times in fundamental opposition to every attempt to exert what is claimed to be a supreme power possessed by the Federal Government over the several States to interfere by way of taxation with the power of the State to maintain its government. This so-called reform, which would constitute a change in the very character of our Federal system, arises, as all such changes in past history have arisen, upon a tax bill. Monarchs whose tyranny has cost them their heads have caused changes of government in the search for new sources of revenue. Thus Charles I lost his head. When the Thirteen Colonies, and the little republic of Vermont, revolted against the mother country it was over this very subject of taxation—the search for new revenue, a search which involved the attempted exertion of a claimed supreme power. I deny the power; and, if it existed, I should deny the wisdom of exercising it. I shall vote for the amendment offered by the Senator from Ohio [Mr. BURTON] because for the time being it would stem this effort which has been made repeatedly since 1913.

Let us not forget in passing that we live under two governments; one is the Government of the United States, whose geographical boundaries we know; the other is the government of the States from which we come to this body, and we know that geographically they occupy exactly the same territory as does the Government of the United States. In other words, we have two loyalties, and we have been able to maintain practically the same form of government for 150 years because we were morally and intellectually competent to adhere to both loyalties at the same time.

One of the instrumentalities by which we have prevented encroachments either way, by the States upon the Central Gov-

ernment, and by the Central Government upon the States, has been the Senate of the United States. Our very character involves the obligation and the high duty on our part to stand for freedom by means of sustaining the position of the several States of the Union.

Let us not forget our importance in this immediate situation. The people of this country may change the Constitution by amendment adopted by a two-thirds vote of Congress and ratified by three-fourths of the several States. But can we take away the representation of any State on that basis? Can we reduce the representation of any State in this body by an amendment of the Constitution in that way? Ah, no. That representation can be changed only by the vote of every State in the Union. There is a reason for it. The reason is to give to this body the obligation, the duty, and the high privilege of standing here against all the other departments of Government to stop any such change in the relationship between the Federal Government and the States which would impair the ability of the States to maintain themselves.

I sense this duty keenly—perhaps more keenly in the present circumstances than if we were not in war, and perhaps more keenly than I have sensed it at any time during the long period I have served on committees having to do with this precise question. I know from experience in the Senate that for the duration of the war we are called upon to centralize in the Federal Government powers which in time of peace we would not think of relinquishing. I know that our danger from the inside, our danger in the name of successful prosecution of the war, is that we will not stop in this centralization.

Immediately, the proposal is not so much a question of revenue. We all know that that is not likely to be the consequence of the adoption of the proposal of the Committee on Finance. The paramount danger is the threat to change the form of government. We are asked to change something entirely fundamental.

We have maintained our federalism largely upon the pillars of the independence of the several States. I venture to say that there is not a single institution under the Constitution which is so strong and powerful a safeguard to the liberties and the free institutions of this country as the degree of independence enjoyed by the several States. Certainly, if we destroy those bulwarks of State power and extend the authority of the Federal Government, a great Government centralized at Washington, we shall no longer have the watchful guardianship of the several States to prevent the overexertion of that power at Washington and its extension in a single standardized form to localities entirely remote from each other, with entirely different and distinct needs in the administration of their local affairs.

Mr. President, this statement might be prolonged; I do not intend to prolong it; but I desire to emphasize that I am more concerned about this so-called reform and more apprehensive of the fundamental consequences of reversing the po-

sition which this country has held for 150 years in maintaining the Federal system instead of a soviet than I am about the question of obtaining revenue.

How can we know that this enactment would be serious enough in practical results to interfere with, impede, and affect injuriously the exercise of government by the several States? We have plenty of evidence of it. We should not be in doubt for a moment. The evidence is in the RECORD.

I listened attentively to the debate yesterday. I noted one of the claims made by the distinguished Senator from Michigan [Mr. BROWN], who is sponsoring this particular reform. He cited the example of New York City and said that so far as obtaining revenue to conduct the affairs of the city is concerned, the increased cost of government would amount to only 86 cents for each thousand dollars of assessed valuation. Only! Let us consider what that means.

The Senator's one-half of 1 percent change in the interest rate was based upon old testimony of 1939 before the special committee on which he and I and other Senators served. All the experts in State and municipal finance who appeared before the distinguished Committee on Finance were agreed, and those who appeared before the House Ways and Means Committee in March of this year were agreed, that at the present time the increase in the cost of local financing would be 1 percent in the interest rate. That is quite different from one-half of 1 percent. It sounds small, but let us assume that a municipal bond carries an interest rate of 3 percent; what is the practical result? An increase of 1 percent in the case of an interest rate of 3 percent means an increase of a third in cost.

Let us assume that the increase in the interest rate is only one-half of 1 percent. In that event there would be an increase in actual cost of 16½ percent on a bond paying 3 percent.

We are talking about interest rates. Let us consider the question in a light which is more favorable to the view which I take of this matter, and assume that the increased cost would be what some of the experts have claimed it would be, namely, 1½ percent. What would be the result in the case of a bond which pays only 3 percent interest? There would be an increase in cost of 49 percent. How would that affect the financing of cities? We know how it would affect it.

Mr. CONNALLY. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. SMATHERS in the chair). Does the Senator from Vermont yield to the Senator from Texas?

Mr. AUSTIN. I yield.

Mr. CONNALLY. The increase would be not for 1 year but for the life of the bonds—perhaps 20, 30, or 40 years.

Mr. AUSTIN. I thank the Senator from Texas for his observation. He is exactly correct. I was about to call attention to what that means in dollars.

The increased interest cost involved in this proposal to which the Senator from Michigan referred as infinitesimal

in its effect upon the financing of New York City would eventually amount to approximately \$30,000,000 a year. This is conservative, because I have figured it on the basis of 1-percent increase in the municipal interest rate, whereas Comptroller McGoldrick of New York estimates the actual increased cost at 1½ percent, which would reflect an increased interest cost of \$45,000,000 a year. Is that infinitesimal?

Let us not forget, in passing, that we are using this fact as it bears upon the importance of this reform upon the functions of government of the city. Mayor LaGuardia testified that had Federal taxes been imposed upon the bond issues of the city of New York it could never have completed its recent \$300,000,000 subway unification plan. It could never have financed the Battery-Brooklyn tunnel.

Is it an important function of government that is being meddled with here under the claim of supreme power? Mind you, Mr. President, that is the way it is presented. The proponents of the proposal do not ask New York City to consent to the proposed taxation. They cannot do so. They do not ask the State of New York to consent to it. They cannot do so. They assume supreme authority and power. In that sense there is not even the mere diffused infection of reciprocity because we, exercising our duty as the legislature of the Federal Government, permit taxation. We consent to it in this very bill.

So, on the one hand, we have consent by the Federal Government to taxation of its issues, and on the other hand we have the assertion by us of supreme power to take away from the several States the power to consent to the taxation of their issues. It is a supremely important issue. It goes to the depths of government. It changes the relationship between the States and the Nation, a change which never should occur by a mere act of Congress. The people should directly participate in so fundamental a change as that.

Mr. CONNALLY. Mr. President, will the Senator yield for just a moment?

Mr. AUSTIN. I yield.

Mr. CONNALLY. Will the Senator permit me to interrupt him for about a minute in order to detail a little episode which occurred some years ago relative to the matter under discussion?

Mr. AUSTIN. Yes; I should be glad to have the Senator do so.

Mr. CONNALLY. At the time of the occurrence of the episode to which I shall refer I was a Member of the House. I went home, and in traveling about in my district I went to a town of about 1,500 people. A lawyer who lived there was a very close friend of mine; and he said to me, "Tom, why don't you people get rid of these tax exemptions on securities? The rich fellows are hiding their money. It is awful, and you should stop it."

I said, "Wait a moment. Are you a member of the school board here?"

"Yes," he said.

I said, "You recently built a new schoolhouse, did you not?"

He said, "Yes."

Then I asked him, "How much did it cost?"

He replied, "\$40,000."

"Did you pay for it with bonds?"

"Yes," he said.

Then I explained to him that, according to my view, and according to the testimony in the House, the interest rate on those bonds would be increased 1 percent—if that is the fact. When I finished explaining to him that his 40-year bonds probably would bear one-half percent or 1 percent increased interest over the period, he said, "My God; don't do that. I did not understand the thing. I did not understand about it."

Mr. AUSTIN. Yes; it is quite different. The emotional appeal which has been used in this case is frequently employed when we face a fundamental barrier which can be surmounted only by sweeping the people off their feet by means of appealing to their emotions. As a matter of fact, such an emotional appeal is founded on a fallacy, on something which is not true; and if I have time to do so, I shall show that to be the case.

What is true, and what is absolutely unanswerable, is the proposition that the function with which we are meddling here is necessary to the existence of the States and to the existence of the municipalities. The function with which we are meddling is the most important function they have. Without it they cannot live and have their being. If it be said that we are not taking it away, that we are only reaching up on it and using it in order to get new revenue for the Federal Government, still it is an effort to bring about a fundamental reform, because at the minimum the Federal Government would be given control. If the Federal Government could impose a tax of one-half of 1 percent as a charge to be added to the cost of State and municipal financing, when it wanted to do so it could impose a tax of 5 percent.

The question is a fundamental one of right and wrong. I do not have to see the proposal of the committee in writing in order to know that it is unconstitutional. The constitutionalism which runs through all free governments is involved. We cannot maintain a Federal system of united States if we permit the Central Government to impinge upon this fundamental function of which is necessary to the survival of the States.

It is the immunity from interference on both sides which has kept us sound, solid, and stable for 150 years. No other government on earth is so old in point of character as is the Government of the United States, which great men across the seas regarded in its dawning as an experiment in free government. To be sure it is an experiment. Never for a moment can we, as Senators of the United States, regard it as being otherwise. Day after day we face it.

Never before have we been confronted by a more serious outlook than that which we face at the present moment. Can we win this war if we destroy the ability and sovereign right of the several States to finance highways and other public works necessary for the health of the civilian communities? When we

consider the necessity for maintenance of training camps and for caring for the health of our troops, we must arrive at the conclusion that the several States are as much a factor as is the Federal Government in maintaining the facilities to protect the health and morals—I am not talking about morale, I am referring to morals—and the training of our troops that are to do battle for us. Therefore, is it not impinging upon the war effort to begin now this novel thing, this entirely new thing, of breaking down the separation between two governments that occupy the same geographical location? We can completely smash a government by means of the power of taxation. There is nothing equal to it except invasion.

Is this matter important? Is this a function which affects the very existence of the municipalities?

There are in the record some figures showing how the proposed increase in cost, which has been kissed off as infinitesimal, would affect the financing of cities. The figures appear in the record: For Baltimore, an increase of \$1,360,000 a year; for Detroit, an increase of \$3,500,000 a year; for Philadelphia, \$5,200,000 a year; for Jersey City, \$680,000 a year; and for Trenton, \$195,000 a year.

I do not want to weary the Members of the Senate by citing further figures on this point, but in the consideration of this matter I know of nothing more important than to pin down one fact or one principle and that is that the function concerned is a function necessary to the existence of the States and of the municipalities.

In Alexandria, Va., across the river from Washington, a little event occurred which pointed out the issue. We are not dealing with polemics; we are not speculating relative to this matter. We are dealing with known facts, with experience. Alexandria, Va., had pending a bond issue of \$750,000 when Secretary Morgenthau made his Cleveland speech on January 21, 1942. The bids, already prepared in municipal bond houses, were on a 2-percent basis. Immediately after the Secretary asked for a Federal tax on outstanding bonds—a proposal which differed from the present one only in principle—the bids jumped 7 points, or \$70 a bond. Just think of it—a loss to the city of \$52,500 in premiums alone; \$52,500 out of \$750,000.

Mr. OVERTON. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield.

Mr. OVERTON. It is a fallacious conception that by imposing the proposed Federal tax on future bond issues of States and municipalities the tax burden would be borne by the purchasers and holders of such bonds. I think that the argument of the able Senator from Vermont, who has made a very close study of the issue, is in itself the answer; but before he concludes his argument I wish he would make it very clear that the burden would not be imposed on the purchasers and holders of the taxed securities, but would be borne by the taxpayers upon whom taxes are levied in

order to pay for the bonds and the interest on them.

Mr. AUSTIN. Mr. President, the mere assertion of that claim by the senior Senator from Louisiana is, to me, all that is necessary; for I know of his experience and study of these matters, and I know that he is well qualified to express that opinion.

I take what he says to be the fact. I am thoroughly convinced of it. Moreover, not only would the added cost of obtaining funds for municipalities fall directly upon the landowners who bear the burden of taxes in the several States and municipalities, but something else might result which in itself would be sufficient reason for us to support the amendment offered by the junior Senator from Ohio [Mr. BURTON]. It is that this proposed additional burden might prevent or stop beneficial activities in behalf of the citizens in countless communities throughout this great land.

I say "might result." The record of the hearings is full evidence that it would so result, and it is the finest proof in the world that the additional burden of financing would fall upon the inhabitants of the community. If that burden happens to be the stoppage of their public activities, such as the maintenance of their schools, the support of their highways, and all the other necessary public institutions, the inhabitants must bear that burden in more than one way. The record, I say, is full of proof of the accuracy of my statement.

Consider Professor Schimmel's testimony. Professor Schimmel has not been called a paid witness; Professor Schimmel is vouched for by the distinguished Senator from Michigan. No reflections have been cast upon him. What did he say about the effect of this reform in our Government? On page 1562 of the hearings before the Ways and Means Committee of the House of Representatives he says:

I want to point out to you that we already have in Michigan three or four measurable results of the fear of taxation of municipal bonds.

Merely the fear of it arising out of a speech, but a speech of a responsible officer of the Government of the United States. He says further:

Last January there was well developed in the city of Royal Oak a refunding program for \$4,000,000 of bonds, which would have reduced the interest rate on the debt of that community by at least one-half of 1 percent.

Mr. President, the debt of the community falls directly on the inhabitants, and no one pays it except the poor fellow who pays taxes on his farm or his home or on other property which happens to be taxed according to the system in effect in every State.

When the announcement was made by the Treasury Department concerning the taxation of municipal bonds that whole refunding program was abandoned—

"Abandoned"—

with the result that on July 1, when the next coupon comes due in Royal Oak that city will have to pay at least one-half of 1 percent more than might have been paid if the refunding program had not been disturbed by the fear of taxation of municipal securities.

Now, let me testify. There is across Lake Champlain a bridge which was built by one of the corporations which is within the scope of the proposal in this bill. It is a municipal corporation in every sense, except that its members are the inhabitants of the State of New York on one end of the bridge and of the State of Vermont on the other end. Those two States entered into a compact, as we always supposed States had a right to do, subject to the approval by the Federal Government, for a refinancing of the bond issue by which that bridge was built and maintained, a refinancing scheme which would reduce the annual cost of maintenance by a lowering of the interest rate on the bond issue. The compact was sent to Congress, and what do we find? It was referred to a committee which has a penchant upon the subject of the reform of the Government in this regard, and when it came out of that committee, was the compact between those two States approved? Oh, no; the committee reformed it, and wrote a few words into the bill that would make the interest on the new bonds taxable. Then what happened? Immediately my people at home said to me, "Do not allow that bill to pass. We will continue to pay the old rate of interest and lose this annual benefit rather than to permit this reform of Government to take place over our heads or with our consent." I have objected to the consideration of that bill ever since, and when it comes up I give notice I want to be present. I hope that the good sense of the Senate will prevent its passage through this body with that provision in it.

Mr. President, I have spoken longer than I had intended and certainly too long on this one subject. I commend to the attention of those who will follow me the remainder of the testimony of this great witness as to what has happened in Michigan in the attempt to finance or refinance activities of the municipalities of that great Commonwealth. It is all one way. Either the burden was assumed with full knowledge that it was an additional cost which the taxpayer must pay, or they held up their hands and said, "We will stop; we will not go ahead; we cannot finance," and they said that on a mere threat. While I have been speaking telegrams have been coming to me. One of them is from David M. Wood, of New York, and it reads:

Supplementing earlier wire, I am advised following necessary refunding operations will be prevented by pending bill: Philadelphia, Pa., \$141,000,000; Rochester, N. Y., \$12,000,000; Buffalo, N. Y., \$18,000,000; Yonkers, N. Y., several million.

I have had similar telegrams from other places, notably from my own city of Burlington, Vt., and also from the attorney general of Vermont.

Mr. President, I wish to leave this point and go on to something else. What I am trying to do is to clear the decks for the main issue. I have tried to meet the contention to which I listened all day yesterday that the additional burden placed upon the inhabitants of this country would be infinitesimal. I have undertaken to show that, in dollars and cents, it is of great magnitude, and in conse-

quences upon the administration of government it is fatal. The efforts to finance which I have pointed out failed because of the threat involved in the pending bill.

What are we to do? I say that when there comes an issue such as this, involving a change in the form of our Government by the mere exertion of the power of legislation, we are here, as Senators representing our several States, to assure them absolutely that it shall not pass.

There was another claim made here yesterday which relates to reciprocity, so-called. What a fallacy! There is no reciprocity proposed in the pending bill. I am well aware of both places in the bill where the question of taxation of Federal securities and State and municipal securities occurs, and I am familiar with the terms. I say it is not a reciprocal proposition at all, and it cannot be made so.

While the Federal Government may not be taxed by the States without its consent—and by this proposal it proposes to give it—on the other hand, the States in the future are to be completely subject to the taxing power of the Federal Government by the exertion of the supreme authority. That is not reciprocity. In order to have reciprocity, the vis-à-vis must get together and agree. There must be the consideration of assent by one in order that assent may be granted by the other. There is no reciprocity if this bill with this proposal in it is crammed down the throats of the people of the United States.

It will not make any difference how much the Federal Government offers to them by way of waiving its immunity. That is not a consideration which is negotiated and accepted by the inhabitants, without which there can be no reciprocity.

There would not be reciprocity on the economic theory, because there are 14 States of the Union which do not have any income-tax law. What earthly good would it be to them for the Federal Government to say, "You can tax the income on our bonds"? To them it would be a zero benefit economically and it would be at the cost of all they have to pay if they continue to provide financially for their own institutions and their own government.

Mr. BARKLEY. Mr. President—  
The PRESIDING OFFICER (Mr. VAN NUYS in the chair). Does the Senator from Vermont yield to the Senator from Kentucky?

Mr. AUSTIN. I yield.

Mr. BARKLEY. There is the question of reciprocity between a State which, through its legislature, might levy a tax upon the income from Federal bonds, and the Federal Government, in the enjoyment of a reciprocal right to levy a tax upon State bonds. How does it affect bonds of political subdivisions less than a State, none of which, so far as I know, levies an income tax?

Mr. AUSTIN. I thank the Senator. He suggests an excellent thought. I had it in mind, but it escaped me for the moment.

Every municipality, every county, which is less than a State in jurisdiction

and authority, is disabled to tax the income of Federal bonds, no matter how magnanimous the Federal Government might be in its offer. So that in addition to the 14 States which are disabled to enjoy reciprocity economically, all the counties and municipalities are in the same group.

Mr. OVERTON. Mr. President, will the Senator yield?

Mr. AUSTIN. In a moment I shall be glad to have the Senator's help.

In the States which have income-tax laws, all save one tax at a rate so much less than the rate at which the Federal Government taxes that the balance would be very seriously against the economic interest of the States, if we entered into such a reciprocal arrangement as has been suggested. I now yield to the Senator from Louisiana.

Mr. OVERTON. The Senator has covered the argument I was about to make. Necessarily the rate of taxation on income in a State is very much less, and must necessarily be less, than that levied by the Federal Government, because if the rate corresponded with the rate levied by the Federal Government, there would be nothing left.

Mr. AUSTIN. I thank the Senator for his suggestion. There is no element of reciprocity in this proposal; there is no quid pro quo that is worthy of consideration.

Mr. CONNALLY. If there could be reciprocity, would it not result in the Treasury having to pay higher rates on Federal bonds also?

Mr. AUSTIN. I believe it would. I think that would be the immediate effect. As to what might happen if changes were made in State statutes to lift their tax rate, I cannot speculate, but what I say, and what I think the Senator from Texas believes, is that even if it were reciprocal, it would be folly. If we as Senators had the chance to say, "My State agrees to this," on the basis of wisdom it would be entirely wrong to do so, because immediately we would break the most important line separation between the two governments, which should be well and clearly identified in order to maintain this Federal system, as we have maintained it for 150 years, with all its strength and with all its beneficence and with all its opportunities to the youth of America.

Mr. BARKLEY. Will the Senator yield for another question?

Mr. AUSTIN. I yield.

Mr. BARKLEY. Going a little further than when I interrogated the Senator a few moments ago in regard to the ability of political subdivisions of States to levy taxes upon incomes from Federal bonds, I think no one will question the assertion that they cannot do it. Nor can they, as I understand, levy an ad valorem tax upon a bond which any taxpayer may hold within a county in a State. We all know the methods of assessment. The county tax assessor or the city tax assessor comes around once a year and takes a list of all our property, including real estate and personal property.

In the taking of such a list for taxation he cannot include Federal bonds. So there is not only no income tax upon the

income from them which accrues to a county, or a State, or a school district which has issued bonds in order to build a modern schoolhouse, but such subdivisions cannot levy an ad valorem tax on the value of Federal bonds. Am I correct?

Mr. AUSTIN. I believe that to be true.

Mr. BARKLEY. That is my impression. I would not wish to be dogmatic about it without looking into it a little further, but my impression is that they cannot levy an ad valorem tax upon the face value of the bonds which have been issued by the Government of the United States.

Mr. AUSTIN. I believe that to be true; I am not certain about it.

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield.

Mr. McKELLAR. To my mind, providing an entering wedge for the National Government to tax securities of States, counties, and cities at will—with full power, supreme power, as the Senator has said, to tax—

Mr. AUSTIN. The power has to be supreme on that theory advanced.

Mr. McKELLAR. Giving such power would be the greatest blow to our dual system of government ever undertaken, and might destroy it.

Mr. AUSTIN. I thank the Senator from Tennessee. If I had the opportunity and power to try to destroy the United States as a Federal system, I would choose nothing more quickly than the power to tax the revenues of the several States.

If it is admitted for a moment that the taxation of the interest on the bonds of municipalities and of the several States is an added burden upon the taxes of the States, then the whole case is admitted. If we undertake to say that the Government can do that by the exertion of supreme power, then the Government has, in principle—or lack of principle—exactly the same power to reach in and take the revenues, all sources of life, of the several States.

What was it that Lenin said? He should be a good guide. He knew how to make a Soviet. Lenin said:

Give me the power to control credit, and I will control government.

Lenin proved it. That is what we confront, consciously or not. I do not accuse any Member of this body of wanting to change our form of government into a soviet, but I do say that one of the evil aspects of this proposal is that it takes the most important step toward wiping out the line of separation between governments which exist within the same geographical boundaries and upon whose existence freedom depends.

Mr. MALONEY. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield.

Mr. MALONEY. Did I correctly understand the Senator to say that by the amendment of the committee it is proposed that we tax State revenues?

Mr. AUSTIN. No. The Senator misunderstood me.

Mr. MALONEY. I am sorry. That is the understanding I had from what the Senator said.

Mr. AUSTIN. I say that once we have admitted, by our assenting to this proposition, that there is a power in the Federal Government to tax the income from municipal bonds and State issues, we have gone the whole length, in principle; we have admitted the supreme character of the power to tax so that the Federal Government could step in and take the revenues directly.

Why do I say that? I say it because the function of obtaining revenue for the maintenance of State and municipal governments is indispensable and essential. It makes very little difference where it comes from, or what the source of the revenue may be. In principle the effect of removing that power, or the intrusion upon that power by some other government, such as the one in Washington, is to take, not by consent, but to take by control, the very life of the State or municipality.

Mr. MALONEY. Would the Senator be willing to admit that the practice is in effect the payment of a subsidy by the Federal Government?

Mr. AUSTIN. A subsidy? No. Mr. President, I view it from the other end. The States existed before the Federal Government was created. The Federal Government has nothing except what the States gave to it, either expressly or by implication. The States never surrendered to the Federal Government the power to tax their domestic issues, or the income from them.

So I say that the States would not get a subsidy from the Federal Government. If the Federal Government now says by way of an invitation, or at least a solatium, "We will let you tax our bonds," that is not a subsidy; it is in the nature of something else which I shall not characterize.

Mr. MALONEY. Mr. President, will the Senator yield further?

Mr. AUSTIN. Yes.

Mr. MALONEY. Does not the Senator believe that the rights of the States, to which he has just referred, were given to the Federal Government by the States themselves under the sixteenth amendment of the Constitution?

Mr. AUSTIN. Oh, no, Mr. President; I entirely disagree with that. I will discuss that question presently.

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield.

Mr. McKELLAR. I wanted to ask the Senator a question on that very point, and, if he will permit me, I shall do so at this time, in order that he may refer to it later in his speech. Yesterday it was argued by the distinguished Senator from Michigan [Mr. Brown] that under the sixteenth amendment the Federal Government has the full power to tax all incomes, citing the words of the amendment itself—"from whatsoever source derived." If we carry that doctrine to its legitimate end, if that language would give the power to tax obligations of the States, counties, and cities, by the same token, and by the use of the same words, the Federal Government would have the power to tax the income of States, counties, and cities.

Mr. AUSTIN. Yes.

Mr. McKELLAR. Of course, if the words in question mean all the income, without regard to where it comes from, when the States, counties, and cities obtain their income through taxation, the Federal Government—simply to carry out the application of that doctrine—could impose a tax on all the income of all States, counties, and cities.

Mr. AUSTIN. Yes; that is true. Later, if I shall not have worn Senators out, I shall discuss the question of the sixteenth amendment and what it means. I realize that there is great disagreement among us about what it means, and I do not think I am more nearly correct than anyone else, but I believe I have a right to stand on my convictions about it, and that is what I shall present. I do not presume to try to convince anyone else. The Members of this body, as I observed when I first came to the Senate, are individuals of fine background, excellent training, and high character, and when they have convictions I doubt the capacity of anyone to change them. Indeed, I thought when I first came here that it would be impossible for these 96 individualists to agree on any legislation.

Mr. President, there is one other thing about which I wish to speak before I come to the subject of the sixteenth amendment, and that is argument made with respect to "loopholes." Really the "loophole argument" is the flimsiest part of this claim. The idea that it is in the public interest to destroy the holdings by men and institutions of Government bonds and disperse them like the seeds of the milkweed and to advance that idea in support of a reform in our system of Government strikes me as flimsy as milkweed.

Mr. President, the facts, however, do not justify the claim that there is a loophole there. No one has risen in all these years in the discussion of this question to deny, and probably no one will in this discussion deny, that on the average the holdings of municipal and State or local bonds by estates over a period of 10 years is more than 6 percent of all the holdings of such estates which were examined by the experts. The estates are classified as having above \$50,000 in assets, but the classification is broken down again and again, so that in the record there are three different classifications.

An examination of all the estate-tax returns filed with the Treasury Department in the calendar years 1927 to 1937, inclusive, reveals somewhat startling figures. These are not selected estates, nor a sampling, but are all the estates reported for tax purposes during those 11 years. During the period noted there were 3,044 estates having a net worth of \$1,000,000 or more. There were 105,499 estates of less than \$1,000,000 net. Of the estates above \$1,000,000, totaling over ten and one-half billion dollars, the following were the percentages of investments:

Wholly exempt Federal bonds, 3.69 percent. I repeat that figure—3.69 percent. Partially exempt Federal bonds, 1.12 percent. State and local bonds, 9.81 percent. Taxable corporate bonds, 4.80 percent. Corporation capital stocks, 55.23 percent.

Mr. BROWN. Mr. President, will the Senator yield?

Mr. AUSTIN. Yes.

Mr. BROWN. That adds up to about 15 percent for tax-exempt bonds in the hands of the holders to which the Senator refers.

Mr. AUSTIN. Does it make any difference to the Senator that that is so?

Mr. BROWN. Yes; I think that shows a substantial part of the property to be in tax-exempt bonds.

Mr. AUSTIN. So far as I know there are other items which should be included.

Mr. BROWN. I simply wanted to bring out—

Mr. AUSTIN. There are not included real estate and other items which go into the total.

Mr. BROWN. I wanted to be sure that the Senate knew that there were Federal-tax exempts, State-tax exempts, and partially tax exempts in that list, and that together they amounted to 15 percent of the total.

Mr. AUSTIN. Oh, without doubt. I have another list to read also.

For estates less than \$1,000,000, totaling \$22,000,000,000, the following were the ratios—we are dealing with stocks and bonds, and not with real estate and other properties:

Wholly exempt Federal bonds, 1.05 percent; partially exempt Federal bonds, 2.46 percent; State and local bonds, 3.61 percent; taxable corporate bonds, 8.46 percent; corporation capital stocks, 36.14 percent.

Let me read the list of the average for all estates—and this covers them all over a period of 11 years—and then see if this is a big loophole, if this is a loophole which makes it necessary to reform the Government, to change the relationships between the Federal Government and the several States in order to plug the gap, without regard to the benefits which the inhabitants of the United States enjoy through the turning of this money into public works, schools, churches, and all the educational and benevolent institutions of this country. This is the average for all estates:

Full exempt Federal bonds, 1.90 percent; partially exempt Federal bonds, 2.03 percent; State and local bonds, 5.63 percent. We have called it, I would say in passing, 6 percent. Many an expert has testified before several different committees which considered this matter, that it was about 6 percent, and I presume that figure is about correct.

Mr. BROWN. Mr. President, will the Senator yield again?

Mr. AUSTIN. Yes.

Mr. BROWN. I did not quite understand to what years the figures apply.

Mr. AUSTIN. They represent the average for the 11 years 1927 to 1937.

Mr. BROWN. The Senator from Vermont will concede that whatever evil there may be—I am not asking him to concede that there is any evil in it because he probably would not—the benefit which the holder of such bonds receives is greatly increased by the extreme rise in income taxation since 1937 and 1938, when those figures were given.

Mr. AUSTIN. Mr. President, I do not agree with the theory of soak the rich and disperse the poverty. I do not belong to that school at all.

The other two items in that table are: Taxable corporate bonds, 7.27 percent, and corporate capital stocks, 42.35 percent.

Mr. President, let us assume—considering it in the light most favorable to the proponents—that this is a big loophole, and that because it is a loophole we should make the reform, and that we should now tax future issues of bonds of municipalities and States, what would we have done for the public welfare? Put it into effect, and what will we have done? We will have exaggerated that which the Senator from Michigan says is an evil. Thereby we will have lifted the value of all those old stocks and bonds, their competition with these new ones will be so remarkably advantageous, that instantly we pass this measure we lay in the laps of those who constitute the loophole a magnificent gift. If we are opposed to that, Mr. President, let us not create that relative disparity between future bonds and old ones. The unearned increment will be greatly increased if we adopt the proposal of the committee to tax future bonds and leave outstanding bonds untaxed. Is not that clear?

Suppose we should cover the whole list. What would we have done? Would we have lifted up any poor fellow who is now already saddled with taxes which are extremely difficult for him to pay? Would he get any of it? Not a cent. On the contrary, he would get the consequences of the lack of market for municipal and State securities, and he would pay through the nose, if he could. He would supply the deficiency with taxes levied upon his farm. He would be the one who would lose. In other words, we would indeed share the poverty, spread it, and increase it. We would not help matters by this effort to tear down the existing situation. We would not spread the bonds around among the poor. We would spread on them the added burden of increased cost of municipal financing.

Mr. BONE. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield to the Senator from Washington.

Mr. BONE. The Senator was reading some interesting figures from the records. I wonder if his figures show where the larger part of the municipal securities are held? I think most Senators are interested in learning where they ultimately come to repose.

Mr. AUSTIN. This particular statement does not show, but I know that other statements contain information along that line. I cannot lay my hand on them at the moment; but my recollection is that municipal securities are largely held by eleemosynary institutions and trusts. Does the Senator's question relate to where they are held geographically?

Mr. BONE. I was not referring to that so much as to the types of people or institutions holding them.

Mr. AUSTIN. The principal holders are trusts. Some are held by individuals who no longer care to make the adventure of life. We once had a man in the Senate who felt that as a matter of good faith to the Government of the United States he ought not to be engaged in

business through the ownership of common stocks and equities. He voluntarily gave up the right to profit by being the owner of equities and exercising control over the management of businesses, and put the principal part of his estate in Government bonds. He was not typical of the average private citizen. So long as a man has energy he does not want to retire to his rocking chair. He will put his money in ventures. He will buy equities. He will buy common stocks in sufficiently large quantities to enable him to exert some power over the policies of the institutions in which he has invested. So long as he believes that he has the physical energy and intelligence to justify his remaining in business, he will stay in business. He will not retire and invest his savings in public issues, which offer a limited income and no opportunity whatever to exercise the gifts which are greater than wealth.

Mr. BONE. Does the Senator object to interruptions?

Mr. AUSTIN. Certainly not.

Mr. BONE. I seek information.

Mr. BROWN. Mr. President, will the Senator yield to me so that I may answer the question of the Senator from Washington?

Mr. AUSTIN. I yield.

Mr. BROWN. The figures which the Senator seeks are in the statement which I made yesterday. Roughly, there are about \$20,000,000,000 of such securities outstanding. I think the correct figure is \$19,500,000,000—\$7,800,000,000 are in the hands of individuals, \$2,100,000,000 are in the hands of insurance companies, \$3,700,000,000 are in the hands of banks, \$500,000,000 are in the hands of ordinary industrial corporations, and there are almost \$5,000,000,000 in the hands of governments. Of course, those in the hands of governments would not be taxable.

Mr. BONE. Does the Senator mean that governments have bought back their own securities?

Mr. BROWN. Yes.

Mr. AUSTIN. Many of them are non-taxable because they are in the hands of eleemosynary institutions.

Mr. BONE. I do not wish to interrupt the genial Senator from Vermont if he objects to interruptions.

Mr. AUSTIN. I welcome them.

Mr. BONE. I recall an experience in my State some time ago; and I try to keep that experience and others in mind in an endeavor to vote correctly on this proposal. I do not wish to ruin municipalities or individuals by my vote if I can avoid it.

A few months ago my city made an offer of light and power bonds of the revenue variety, with which the Senator from Vermont is familiar. They represent a common type of security. In that section of the country—and I suppose the same practice obtains in other places—when bonds are tendered the bid is on the interest rate, the bonds being sold at par. The city obtained a bid of 1.74, or an interest rate of 1.74 percent. As I recall, that is lower than the interest rate on any Government security of long maturity. It was an ideal bid, and the city sold \$4,000,000 worth of light and power bonds on that basis. They were straight revenue bonds.

Subsequently the city needed more money in the development of its municipal power system and it made a further offer of \$4,000,000. However, in the interim there had been discussion about taxing municipal securities. Nothing was done, but there was general discussion preliminary to this character of legislation.

It is interesting to note the change in the next bid. The bid on the second \$4,000,000 was made in the light of the impending possibility, it seemed, of legislation of this kind, and that bid was 2.2 instead of 1.74.

Yesterday I heard some of the arguments. The Senator from Oklahoma [Mr. LEE] quoted a decision of the Supreme Court in which one of the Justices said that this was not a tax on a municipality or a public body, but rather a tax on the individual.

That is both true and untrue. The Senator from Ohio [Mr. BURTON] later read an extract from an opinion of Justice Hughes which I think more clearly states the legal issue involved. If we tax such bonds the result is an increase in the bid price on the interest rate. That is immediately reflected back in an additional burden which the people of the city, county, or State must pay. To that extent I believe it is a burden. I do not know whether that is an argument or not, but it certainly is a fact.

Mr. AUSTIN. It is an argument which tends to prove that we are dealing with an essential function of Government.

Mr. BONE. I have talked with many lawyers who are dispassionate about this subject and who have no illusions. They do not care very much how we raise our money. They believe that we must raise it, but they regard this particular procedure as washing one hand with the other. I believe that is the expression which some of them have used. It is like taking money out of one pocket and putting it into the other. The Government has unlimited power to tax. It can clamp an income tax on the people of my State and obtain all it wishes from them by an income tax.

I am wrestling with this problem in my own mind, and wondering if the pending proposal is not a variant of the income tax. As a money raiser I believe that the benefits of the proposal to tax the income from municipal securities are more apparent than real. I do not know that it would serve the purpose which those who believe in it think it would serve.

Mr. AUSTIN. In the first place, I believe that the proposal before us would not now produce revenue of any consequence. In the long run, say 20 years from now, when events will have sufficiently changed the situation so that there will be a larger volume of income to tax, I believe that even then there will be no benefit to the States and separate communities. In fact, I believe there will be a greater loss than there is now.

Mr. BONE. I should like to refer to another angle. If the Senator does not wish to have me interrupt him, I shall not do so.

Mr. AUSTIN. I am very pleased to have the Senator's contribution.

Mr. BONE. I think perhaps this discussion will be helpful to all of us. A number of men have talked to me about this angle. Perhaps Senators may be a little confused about it, because of lack of precise knowledge.

In this bill there is a reciprocal arrangement, under which the States may tax Government securities.

Mr. AUSTIN. It is not reciprocal. I do not believe the Senator has heard my argument on the question.

Mr. BONE. I have not. I do not wish to argue the question, because, frankly, I am not sufficiently well informed about the technical aspects.

Mr. AUSTIN. It is not reciprocal, because there is no agreement. On the one hand the Federal Government says to the States, "I will take." The States do not say to the Federal Government, "You may take; we give you permission to take."

Mr. BONE. We have no State income tax in my State, so it is probable that my State, as a State, could not, through the income tax, reach the income from Federal bonds.

Mr. AUSTIN. I have already pointed that out. There are 14 such States.

Mr. BONE. Many municipal and State issues are sold in the State of Washington. I presume the same thing applies to other States. The point which has always bothered me is, Where do those issues go? If they were held by the people of the State of Washington, that would be one thing.

I believe that many of such issues come to repose in the portfolios of institutions such as the Senator from Vermont mentioned. They go into banks and are sold to investors all over the country. The light and power bonds of my State were taken up by eastern syndicates, and I could not buy one in Seattle or Tacoma. I think they went to the East. Even if the proposed arrangement were wholly reciprocal, how much good would it do?

Mr. AUSTIN. On that point, a study of the Treasury Department's own estate-tax records throughout the period from 1926 to 1939, inclusive, shows that only 6 percent of the capital in all estates over \$50,000—and that represents a large class—has been invested in State and local bonds. Think of it. We are really straining ourselves to bring about a momentous change.

Mr. BONE. In my opinion, the fallacy of the argument of the Senator from Oklahoma [Mr. LEE], yesterday, when he was quoting a Supreme Court Justice, lies in the fact that if we have to pay more interest on our municipal, State, and local bonds, which are issued for sewer projects, to increase the fire department, or to take care of some other public function, I, as a private citizen, have to pay more taxes in order to carry the added interest rate. I do not happen to own any of such bonds.

Mr. AUSTIN. It is a burden.

Mr. BONE. It is a burden on me, whether I own any of the bonds or not. I think there is a great advantage in the cities having as small a burden as possible to carry in the interest rate. Therefore it becomes important to know how much the Federal Government

might realize from the proposal and whether there is enough compensation in it to justify it.

Mr. AUSTIN. The claim and the evidence indicate about \$3,000,000 to begin with.

Mr. BONE. Three million dollars a year?

Mr. AUSTIN. Yes. With a large tax bill such as the pending one, of course, that is a relatively small amount.

However, as I said at the outset, the amount of money which the Federal Government would obtain if the provision were incorporated in the bill makes no difference in my conviction that the proposed step is absolutely the wrong one to take from a governmental point of view. I think it is wrong in principle.

Mr. BONE. Of course, when even we allow reciprocal taxation we get into a mad race; and it involves what I know has been regarded rather cautiously by many lawyers in times past, letting down the bars and letting governments tax one another. It might lead to a very peculiar situation. I cannot analyze it to its ultimate conclusion to suit myself or to know what the correct answer is; but I have had some misgivings about taxing municipal bond issues. I think there are misgivings in the minds of many of the people of the country. Not long ago I heard a radio broadcast which left the impression that an astronomical amount of such securities is outstanding. Of course, I know that a man receiving only 1½ percent interest on bonds would have to have a great many of them in order to receive from them a large income. If he had \$1,000,000 of them, he would receive a little over \$17,000 a year as interest. A man would have to have a tremendously large estate in order to receive a large income from bonds bearing such a rate of interest.

Mr. AUSTIN. I think that the loophole argument is the most ridiculous one which has been advanced in support of the proposal. One of the witnesses who favored the proponent's view of the matter, Professor Williamson, has recently written that the extent of evasion by the rich through tax exemption has been exaggerated. In all events, I say that the evil consequences of the proposal so far outweigh the controversial issues as to how large a loophole may be involved, that, as has frequently been said, it amounts to a recommendation to burn down the barn in order to catch a few mice, as the Senator from Ohio said yesterday.

I believe that the most competent study which has yet been made of the holdings of State and municipal bonds is that made by Carl H. Chatters, executive director of the Municipal Finance Officers Association, in the *Annals of the American Academy of Political and Social Science*, in March 1941, in which he said—and this is directly on the point made by the Senator from Washington:

According to my own estimates, individuals with annual incomes of \$5,000 or more own \$3,500,000,000 of State and municipal bonds.

If we assume an average rate of interest of 3 percent on the bonds, that means that the total amount of income which conceivably may be considered is \$105,-

000,000 a year. Thus, the total individual income subject to tax which is in dispute here as a possible loophole amounts to only three-quarters of 1 percent of the national income, based on a national income of \$120,000,000,000.

So, when we come to take a practical view and examine into the matter, we find that the loophole argument, which is that some persons are escaping taxation by means of ownership of tax-exempt securities, and which is the argument relied upon as the most important of all—in fact, from the special studies which the special committee made, I received the impression that the loophole argument was really the cause of the beginning of the movement—is the poorest sort of an emotional argument. The application of the committee's proposal would not benefit anyone, but would add to the burdens of the poor man, the man who owns his home, the man who owns an equity in a farm, and everyone else who would have to answer for the added burden of the cost of government of a town. He is the man who would have to bear the burden.

Who would receive any benefit from it? The Federal Government? Well, at the present time \$3,000,000 is a very small amount.

Mr. BONE. We have been forcing down interest rates so rapidly in recent years that I wonder whether we shall be able to float securities very freely if reductions in interest rates continue. I do not know; perhaps there is a great deal of idle money, and perhaps men would rather have it tied up.

Let me suggest a problem: A little town wants to build a sewer. It is not a very wealthy town, and the only way to get the money is by means of a bond issue. It cannot tax the people enough to obtain the cash with which to pay for the sewer. It has to sell bonds. Under the committee proposal, the buyer of the bond would not know what he would be liable to be taxed in years to come; he would not know what the rate would be in years to come. Therefore, he would be tempted to bid up the interest rate on the bonds, if they were sold as they are sold in my State.

Mr. AUSTIN. That is the point. In other words, it would be upon the credit power of the governing body a burden which would fall before the exercise of the power, as the Supreme Court has held in a string of cases since 1913.

Mr. BONE. Of course, the buyers would want to hedge against the future; and therefore the small town would get "stuck," if I may use a vulgarism, with taxes that would be in the future. The man who would buy the bonds would be uncertain as to what he would have to pay; so he would hedge, take out some insurance, and bid up the interest rate before he would buy the bond. If all purchasers were in that frame of mind, the communities would have to pay a great deal more interest, and, under the circumstances I have mentioned, the purchasers of the bonds would manage to pass on to the community the added cost. That is why I think that, after all, it is a matter of washing one hand with the other. If all the money comes to

repose in the Treasury of the United States, no one is helped very much, but the little communities will have had to pay a little more interest.

Mr. AUSTIN. I do not know whether it is washing hands or dirtying them.

Mr. BONE. I do not know how the Senator prefers to characterize it.

Mr. AUSTIN. I have the feeling which the Senator from West Virginia [Mr. ROSIER] stated so well yesterday when he said that what local governments are confronting if we continue to follow this leadership and trend is such a condition as that they will have to come on bended knees to the Federal Government and get their money there, or go without, and be deprived of their public works, their schoolhouses, their hospitals, their colleges, and their other eleemosynary institutions; they would no longer be independent and competent to take care of themselves, but would have to come to the supreme power, and ask for the necessary money.

Mr. ROSIER. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. WALLGREN in the chair). Does the Senator from Vermont yield to the Senator from West Virginia?

Mr. AUSTIN. I yield.

Mr. ROSIER. I am not a statesman. I have simply been a student. I have been very much interested in the debate. I think it is a curious circumstance that the greatest debate on the tax bill should be about a matter which will not produce any revenue. [Laughter.]

Mr. AUSTIN. That is because something other than taxes is involved.

Mr. ROSIER. Those out in the country would think that when Senators were discussing the tax bill they would be deeply involved in some phase of it which would impose a large tax on someone or raise a great deal of money; but we have had almost 2 days' debate about a phase of the bill which all agree would not produce very much money for years to come.

So, the intriguing thing about the whole discussion, to me, is the principle back of it. There is no question that a great issue lies back of all the debate; and I desire to compliment the Senators who have participated in it. I think the Senator from Ohio [Mr. BURTON] showed that he had given great study and thought to the question, and the Senator from Michigan [Mr. BROWN] certainly presented a masterly argument on his side of the question. Now the Senator from Vermont is presenting a very able argument. To me, as a student, the question is intensely interesting and I have listened attentively.

The issue back of the argument is the relation between the taxing power of the Federal Government and the taxing power of the States and the various communities of the States. That is a vital thing.

Take my State, for example: A few years ago, under a tax-limitation amendment to our constitution, the municipalities of the State found themselves practically unable to raise funds to carry on their municipal activities. We set up a State liquor system. Back in the old

days the municipalities used to raise a considerable portion of their funds from licenses, but when the State liquor system was set up the State took all the profits. The communities and towns had to maintain order and take care of all the drunks, but the State took all the money derived by way of profits from the liquor business. In our State legislature we have had a fight for the last two sessions as to whether the State should be compelled to make a refund to the municipalities out of the profits collected on the sale of liquor.

The principle involved in this debate is, What shall be the relation of municipalities, counties, and States to the Federal Government in the matter of imposing, collecting, and distributing their taxes? For that reason, I think that, while it revolves around a proposal that does not mean any great additional revenue, it does involve a problem which is extremely vital to the operation of our Government. I compliment all the Senators who have taken part in the debate, which I have followed with great interest.

Mr. AUSTIN. Mr. President, I now wish to advert to the question of the Senator from Connecticut regarding the effect of the sixteenth amendment. As I recall, he asked me if I did not think that the people of the several States and of the United States agreed that the Federal Government could invade the States and tax the income of municipal bonds and State bonds and other securities; and I said "No."

I wish to say, as a preface, that if the Constitution did not set up a system by which the States could be distinct and separate sovereignties, having the need of a separate source of revenue for their existence, and the problem was confronting us here today of creating a government, I would say that, on the ground of policy, if on no other, we ought to provide an immunity from invasion of the States by the Federal Government and from invasion of the Federal Government by the States with respect to this vital function of the maintenance of the separate governments through revenues collected by them, or borrowed by them, or obtained in any way by which they could be obtained. In other words, what I am trying to convey is that upon ethical grounds, upon common sense, upon political grounds, I am opposed to the waiving of this immunity from taxation by each other, which, throughout the life of our country, has always existed on the part of the States and on the part of the Federal Government.

Mr. President, I shall not weary the Senate by reviewing numerous cases and discussing what they hold and the language in which the holding was couched. This work has been beautifully done already by the Senator from Ohio. But I ask anyone who is sufficiently interested in that element of the discussion to turn to the table of leading cases in the content table of the views of the minority, submitted by me as Report No. 2146, part II, Seventy-sixth Congress, third session, Special Committee on Taxation of Government Securities and Salaries created by Senate Resolution 303 of the Seventy-fifth Congress.

There practically on one page—there are four cases cited on the next page—are listed cases and decisions by the Supreme Court of the United States which include decisions rendered after the adoption of the sixteenth amendment and continuing down to the time the report was submitted. There is also for convenience, set forth in a line or two, a catch phrase from each of those cases which shows what it held bearing on this point. From the report it will not take 5 minutes to get a bird's-eye view of the history of this jurisprudence since the sixteenth amendment was adopted, and from it any man of reason, any man who is not so blind that he cannot see, must observe that the highest authority there is on questions of constitutionality, the Supreme Court of the United States, which was created particularly and uniquely for the purpose of construing the Constitution of the United States, has repeatedly and continuously held that the sixteenth amendment did not give any authority or extended scope of taxation. No new power whatever was considered; none was granted. Up to the time when the sixteenth amendment was adopted, Congress had just the same powers as the sixteenth amendment sought to confer, but when Congress tried to exercise them with respect to a tax which was not apportioned among the several States it bumped into trouble, and it was to escape that difficulty that the sixteenth amendment was adopted. The emphasis should be on the "without apportionment" clause of the sixteenth amendment, wholly and entirely, for that is its meaning as held by the Supreme Court repeatedly.

I like to use the National Life Insurance Co. case because the National Life Insurance Co. is a Vermont corporation, and I have personal acquaintance with the men who handled the case. They were friends of mine, and I was familiar with it when it was being tried. In that case the decision again asserted—and I quote this line:

The United States may not tax State or municipal securities.

Could anything be plainer than that?

Mr. CONNALLY. Mr. President, will the Senator yield there?

Mr. AUSTIN. I yield to the Senator from Texas.

Mr. CONNALLY. The State of Vermont or the State of Texas, or any other State, in order to function as a State, must have a State capitol building, must it not?

Mr. AUSTIN. Yes, indeed.

Mr. CONNALLY. If, however, the State's efforts to provide the building must result in the issuance of bonds, and if the bonds are taxed by the Federal Government, is not the Federal Government then taxing a supposed sovereign for the right to exist?

Mr. AUSTIN. It is, and it is laying a burden upon the credit of the sovereign State before the credit power is exercised. That is one of the reasons why it is an invasion of a function which is exclusively that of the State and one that is absolutely necessary to its existence.

Mr. LUCAS. Mr. President—

The PRESIDING OFFICER (Mr. BUNKER in the chair). Does the Senator from Vermont yield to the Senator from Illinois?

Mr. AUSTIN. I yield.

Mr. LUCAS. Can the able Senator from Vermont tell me whether or not the Congress in the past has ever attempted to levy or has levied a tax on municipal issues?

Mr. AUSTIN. Yes, and the question brings me to state the proof as to how the sixteenth amendment has been interpreted in actual practice. Good lawyer that he is, the Senator from Illinois recognizes that there is nothing that has more probative force in the construction of a constitutional provision than the current interpretation made of it by its authors and by those who first put it into effect, and certainly by the courts which have passed upon it ever since it was ratified.

Since 1913, when the sixteenth amendment was ratified, Congress has year after year and session after session virtually reiterated the principle that the United States may not tax State or municipal securities, and put its seal of approval on the principle by repeatedly and expressly providing, in every tax bill, that the income from such securities should be exempt from taxation. So we have the highest authorities on earth, we have the Congress of the United States, and we have the Supreme Court of the United States, unvaryingly, without a single break from 1913, when Article XVI of the amendments was ratified, down to the present time, respecting and consolidating the positions of the several States of the Union in respect of the most important and necessary function of government, namely, the raising of revenues for its existence.

Mr. LUCAS. I am not sure that I made myself clear. Yesterday when the Senator from Michigan [Mr. BROWN] was debating this very important revenue measure he made a statement in which he said, as I recall, that at one time in the history of this Nation legislation was enacted by which municipal securities were taxed. That is what I was referring to primarily. I know exactly what has been done since the sixteenth amendment was ratified, and I agree with everything the able Senator from Vermont has said. I did not have an opportunity to question the Senator from Michigan upon that point, and I am wondering whether or not the Senator from Vermont is familiar with the statement that was made, and familiar with the legislation referred to, if there was any.

Mr. AUSTIN. Mr. President, the question being asked me in that form, I should not feel like answering it directly, because I certainly do not know of the history to which reference is made. I do know that section 22 (b) (4) of the Revenue Code has for all these years exempted from taxation the income from bonds of States and political subdivisions of States. I do know that that is the best evidence of the view of the Congress of the United States of the meaning of article 16 of the amendments to the Federal Constitution.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield.

Mr. BARKLEY. I think the Senator from Illinois and the Senator from Vermont will find that during the Civil War there was levied a general income tax, for war purposes, which included a tax on the income from municipal bonds. It was subsequently repealed, and, as I recall, never got into the courts at all, to be passed upon by the Supreme Court of the United States. But such a tax was levied for a few years, as I recall, beginning during the Civil War.

Mr. AUSTIN. I thank the Senator from Kentucky. I have observed that his memory is one of the phenomenal things about him, and he is a man whose capacity and character I greatly admire for other reasons also.

Mr. BARKLEY. I thank the Senator from Vermont.

Mr. LUCAS. As was stated by the Senator from Kentucky, that law was passed during the Civil War or immediately following the Civil War, and was primarily and solely for war purposes.

Mr. BARKLEY. Yes.

Mr. LUCAS. After the war was over and the purpose had been served, the Congress of the United States repealed the law before the Supreme Court had ever had an opportunity to pass upon the validity of the legislation.

Mr. BARKLEY. I think that is the fact.

Mr. LUCAS. Assuming that to be true, the provision now proposed is not to be enacted for any war purpose, but it is a principle which those sponsoring it are attempting to enact as legislation which will remain upon the statute books for all time, at least until it is repealed, or until it is passed upon by the Supreme Court of the United States and held not to be constitutional. In other words, as I follow the trend of the debate, there is very little to be gained, from the standpoint of raising revenue, by taxing the income from municipal issues, but the effort is now to fasten a principle not heretofore enacted into legislation to stand for all time to come.

Mr. AUSTIN. The Senator is correct.

Mr. LUCAS. To my mind there is a very serious question as to what should be done. I have attempted, in my limited way, to follow the debates on the subject, and I certainly do not want to do anything by my vote which may result in an encroachment upon the powers of the States.

Mr. AUSTIN. I submit that we should exert ourselves to protect the States.

Mr. LUCAS. I am inclined to agree with the Senator that we should do so. On the other hand, I desire to make it clear that I do not want to do a single thing in connection with any proposed legislation coming before the Congress of the United States that will thwart the war effort one iota, and I know that the Senator from Vermont does not want to do that either.

Mr. AUSTIN. Of course not.

Mr. LUCAS. That is constantly in my mind as I attempt to make a decision upon the very important question before us. If I thought for one moment that the proposed amendment would aid the war effort, and at the same time

not seriously cripple the municipalities in any way, I would not hesitate for a moment to vote for the amendment. That question is hanging in the balance at the present time. I seriously doubt, from what I have heard from both the proponents and the opponents of the proposed legislation, that the benefits which we would derive, from the standpoint of revenue to help in the war effort, would be sufficient to justify overturning the great principle involved.

I thank the Senator for allowing me to make this brief statement.

Mr. BURTON. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield.

Mr. BURTON. It seems to me that the statement the Senator from Illinois made was in the nature of a suggestion that perhaps the constitutionality of taxing income from municipal bonds had not been passed upon by the Supreme Court. It has expressly been passed upon. The taxation of interest on such bonds has been held to be unconstitutional, and I believe the clearest way to bring that into the Record is to quote briefly from an opinion delivered by Chief Justice Hughes, in the case of Willcuts against Bunn, in 1930. In that case he referred briefly to the matter now under discussion. He first referred to a case in which a State had attempted to tax Federal securities wherein it had been held by Chief Justice Marshall that such action was an intrusion of the State government on the Federal Government, Chief Justice Marshall had said:

The right to tax the contract to any extent, when made, must operate upon the power to borrow, before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burden on the operations of government. \* \* \* The tax on Government stock is thought by this Court to be a tax on the contract, a tax on the power to borrow money on the credit of the United States, and, consequently, to be repugnant to the Constitution.

That decision held that a tax by a State upon Federal stock was unconstitutional.

Chief Justice Hughes then continued, reading from page 227, volume 282, of the United States Reports, as follows:

This language was applied by the court in *Pollock v. Farmers' Loan & Trust Co.*, supra (157 U. S. at p. 586), in holding invalid Federal taxation "on the interest" from municipal securities.

That was a unanimous decision rendered by the Supreme Court in 1895, and it stands unchanged to this day.

It has been the law of the United States, as interpreted by the Supreme Court, that the Constitution precisely prohibits a statute such as the one now being proposed by the Committee on Finance.

Mr. AUSTIN. Was the Senator reading from the Dravo case?

Mr. BURTON. No, I was reading from the case of Willcuts against Bunn.

Mr. AUSTIN. That is a later case than the Dravo case, is it not?

Mr. BURTON. The decision in the case which I have read was rendered in 1930. I think the Dravo case was decided in 1937.

Mr. AUSTIN. The Dravo case is a later case. I shall later call attention to the language in the Dravo case. It is very applicable to the point the Senator from Illinois raised in his question.

Mr. LUCAS. I want to take the opportunity of thanking the Senator from Ohio for quoting the decision in the Willcuts case. As I listened to it, it seemed to be on all fours with the holding in the Pollock case.

Mr. BURTON. There is no question about the Pollock cases. There are two of them. The decision is on all fours. It was recognized repeatedly in dicta. The court goes to great length to point out that they were not at that time overruling the former decision, or passing upon the issue now being discussed.

Mr. LUCAS. The decision in the Pollock case was handed down in 1895. That was a great many years ago, and we have been progressing since that time, and I take it that the proponents of the proposal now before us are hoping that the Supreme Court will overturn the decision of 1895. I do not know whether that argument has been made upon this floor, but apparently, if the Senator was correct in quoting the language, as I know he was, it is apparent that the Supreme Court will have to reverse itself in the event the proposed legislation is adopted and finally reaches the Supreme Court.

Mr. BURTON. That is clear, it will have to reverse itself, and the Court in several cases—and I dare say the Senator from Vermont can call attention to them—has directly commented on that fact.

Mr. AUSTIN. Mr. President, I referred to many of the decisions, though I do not believe to all. There have been about 30 decisions rendered since 1913 holding uniformly the same way, that this immunity is vital and that the Federal Government may not tax State and municipal bonds. The application was made in the case of James against Dravo Contracting Co. in 1937.

Mr. BROWN. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield.

Mr. BROWN. Do the Senator from Ohio and the Senator from Vermont state that the Supreme Court has, since the decision in the Pollock case, passed on the question of whether or not income from municipal bonds is taxable by the Federal Government? If so, how did the question arise?

Mr. AUSTIN. Mr. President—

Mr. BROWN. There is only one answer which the Senator can make, and it is no. It never has passed upon the question.

Mr. AUSTIN. I think I shall have to read some cases to the Senate. If the Senator from Michigan asserts that the Supreme Court has not passed on this question since the Pollock case, let me read a few cases, and then let the Senator from Michigan make his own argument. The Senator made that claim yesterday. I was astounded then and am astounded now that the Senator should imply what he does imply. I will leave it to the Court, and read the language of the Court. Then the Senator

may do what he pleases with the language when he comes to respond.

Mr. BROWN. Will the Senator permit me—

Mr. AUSTIN. I yield.

Mr. BROWN. How could the Court pass on the question when no attempt has been made to impose the tax since 1895?

Mr. AUSTIN. I will read the language of the Court. I know of no better answer to the Senator from Michigan than the language of the Supreme Court of the United States. I am reading from page 28 of the minority report to which I referred before. I read from the case of *James v. Dravo Contracting Co.* (302 U. S. 134) the following language:

There is no ineluctable logic which makes the doctrine of immunity with respect to Government bonds applicable to the earnings of an independent contractor rendering services to the Government. That doctrine recognizes the direct effect of a tax which "would operate on the power to borrow before it is exercised" (*Pollock v. Farmers' Loan & T. Co.*, \* \* \* supra) and which would directly affect the Government's obligation as a continuing security. Vital considerations are there involved respecting the paramount relations of the Government to investors in its securities and its ability to maintain its credit—considerations which are not found in connection with contracts made from time to time for the services of independent contractors.

Reflect for a moment upon what the Court said in 1869. Remember I have been reading from a decision in 1937. I now turn back the pages to 1869. The Court then held:

It may be admitted that the reserved rights of the States, such as the right to pass laws, to give effect to laws through executive action, to administer justice through the courts, and to employ all necessary agencies for legitimate purposes of State government, are not proper subjects of the taxing power of Congress.

Mr. LUCAS. Will the Senator repeat the last paragraph?

Mr. AUSTIN. Yes.

It may be admitted that the reserved rights of the States, such as the right to pass laws, to give effect to laws through executive action, to administer justice through the courts, and to employ all necessary agencies for legitimate purposes of State government, are not proper subjects of the taxing power of Congress.

Mr. President, from that day to this the Supreme Court has unequivocally upheld the doctrine of State immunity in no less than 34 decisions extending down to and including the most recently decided cases. The 34 cases are listed in the brief submitted to Congress by the attorneys general of the States entitled "Constitutional Immunity of State and Municipal Securities—A Legal Defense of the Continued Integrity of the Powers of the States," pages 60 to 62.

Mr. LUCAS. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield.

Mr. LUCAS. As I understand, when that decision was written there was no legislation upon the statute books affecting the taxation of municipal securities.

Mr. AUSTIN. In 1869? I do not know.

Mr. LUCAS. I was wondering how the case got before the Court, and what caused the Court to make the decision which it made.

Mr. AUSTIN. I have digested that somewhere, but I cannot immediately find it.

Mr. LUCAS. I ask the question simply in view of what the Senator from Michigan said a moment ago.

Mr. BROWN. Mr. President, will the Senator yield to me for a moment?

Mr. AUSTIN. I yield.

Mr. BROWN. In the first place, the Dravo case was one which very strongly supports the position taken by the Senator from Michigan instead of that taken by the Senator from Ohio [Mr. BURTON] and the Senator from Vermont [Mr. AUSTIN] in this respect—

Mr. LUCAS. Mr. President, I am simply an innocent bystander trying to ascertain the facts.

Mr. BROWN. The controversy there was over a tax imposed by the State of West Virginia upon the gross receipts of a contractor having a Government contract to build—

Mr. AUSTIN. Is the Senator speaking about the Pollock case?

Mr. BROWN. No; the Dravo case. The case involved the right of the State of West Virginia to tax the gross receipts obtained from the Federal Government by a contractor who, under a contract with the War Department, built certain dams and locks in a river in West Virginia. By a 5-to-4 decision the Court held that notwithstanding the fact that the cost to the Government of the United States was increased by reason of the State tax upon the gross receipts of the contractor, it was nevertheless a valid tax. The Senator from Vermont cannot find any cases—there are not any—since the Pollock case, a case which will, in my judgment, be clearly overruled, and which I think is overcome by the sixteenth amendment, wherein the question of the right of the Government to tax bonds of a municipality or a State was submitted to the Supreme Court of the United States. The question never has been submitted since the Pollock case, because there has been no opportunity to do so. We have never attempted to tax such bonds.

Mr. AUSTIN. Yes, Mr. President, that is the turn which this sort of logic takes. The Court has not passed upon that point as the only or the direct issue necessary in order to decide the case. Those who present such an argument can get away with that all right, but they cannot get away from the well-considered reasoning of the Court which held time after time, in spite of the fact that it was not necessary to a decision of the case, that the Federal Government could not tax the income on the securities of States and municipalities.

Mr. BROWN. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield.

Mr. BROWN. The Senator will remember that in *Evans against Gore*, the Supreme Court of the United States held that the salary of a Federal judge could not be taxed. The Senator will recall that very recently the Supreme Court reversed its decision in *Evans against Gore*, in the light of a much more reasonable basis of reasoning, in my judgment, and held that the salary of a Federal judge could be taxed. Precisely the same

reasoning stands back of the power of the Federal Government to tax the income on municipal bonds.

Mr. AUSTIN. Mr. President, I cannot understand how the Senator from Michigan can face the language of the Supreme Court in decision after decision and make the arguments which he makes here in favor of this type of reform in government. There is not any doubt of this language in the National Life Insurance Co. case:

It is settled doctrine that directly to tax the income from securities amounts to taxation of the securities themselves.

There is a breach between the word "themselves" and what I now read—

Also that the United States may not tax State or municipal obligations.

My recollection is that in the National Life Insurance Co. case the Court passed directly upon the question of the power to tax State or municipal securities. Some of the bonds in the portfolio of the National Life Insurance Co. were of this character.

Mr. LUCAS. Mr. President, in what year was that case decided?

Mr. AUSTIN. It is the case of *National Life Insurance Co. v. United States* (227 U. S. 508), decided in 1928.

In *Evans against Gore*, a case in which Mr. Justice Vandevanter rendered the opinion holding that the salary of a Federal judge could not be taxed for the reason that it would be a diminution of his salary, the decision was based on another ground, as Senators can see; but he also passed upon the question which we are discussing, and said, after carefully examining the sixteenth amendment, that the situation was not remedied by the words "from whatever source derived," no new power being granted by the amendment.

There is no way of arguing around that. That was the reasoning of the Court, and if reason does not appeal to us, what is the use of debating the question.

The opinion in the Willcuts case, to which the Senator from Ohio referred, was written by Chief Justice Hughes. He distinguished between taxation of a municipal bond itself and taxation of the income, and approved the Pollock case. What is the use of arguing that the Pollock case was decided before the sixteenth amendment was adopted, and therefore does not apply, when decisions which were rendered after the sixteenth amendment was adopted refer to the Pollock decision and give it stability and active force? Is there no power at all in reason?

Mr. BURTON. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield.

Mr. BURTON. I have before me the opinion in the Willcuts case. I read one sentence from the opinion by Chief Justice Hughes, on page 227. After distinguishing the case before the Court, he said:

But it does not follow, because a tax on the interest payable on State and municipal bonds is a tax on the bonds and therefore forbidden, that the Congress cannot impose a nondiscriminatory excise tax upon the profits derived from the sale of such bonds.

In the case before the court, Chief Justice Hughes said that profits derived from the sale of such bonds might be taxed, but in reaching the conclusion he said:

But it does not follow, because a tax on the interest payable on State and municipal bonds is a tax on the bonds and therefore forbidden—

It seems to me that the opinion of the Chief Justice is clear. He thought that the Pollock case was in effect, and that such a tax was forbidden.

Mr. AUSTIN. That is what he said about it. I take his word for it. I think he said what he meant, and meant what he said, no matter what this debate may provoke.

Mr. BROWN. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield.

Mr. BROWN. The question in the Willcuts case did not involve the interest on bonds at all.

Mr. AUSTIN. No. That is plain. We understand that.

Mr. BROWN. A man had some municipal bonds, which he sold at a profit of some \$760. The question was whether the profit was taxable. The Supreme Court held that it was taxable.

Mr. AUSTIN. At the same time, it held that the income was not taxable.

Mr. BROWN. The Court went on to say, as it has said on a number of occasions, that in its judgment the rule in the Pollock case still applied. I have never contended anything else; but the Senator from Vermont and the Senator from Ohio are too good lawyers not to know that it is a cardinal principle that a court speaks not through its opinions, but through its decisions. Since 1896, when the Pollock case was decided, it has not decided a case involving the power of the Federal Government to tax a municipal bond.

Mr. AUSTIN. Mr. President, I take issue with that last statement of absolutism regarding the decisions of the Court. I say that when the Court refers to the Pollock case and reaffirms it in a subsequent case, it adds to the strength and the moral authority of the principles of the Pollock case, and shows that those principles are in effect today, after the adoption of the sixteenth amendment, even though the Pollock case was decided before the sixteenth amendment was adopted. That is the value of those cases.

I now invite attention to another case, that of *Helvering v. Mountain Producers' Corporation* (303 U. S. 376). This case was decided in 1938. The Chief Justice rendered the opinion. In that case he took up the Pollock case. The immunity from taxation of such bonds was distinguished, and the Pollock case was reaffirmed.

How far are we going with this? We are about to make a decision of the greatest importance. By our vote on the amendment of the Senator from Ohio we are to say, after full consideration and debate, whether we now stand for freedom, as our predecessors have stood for 150 years, or whether we are to break down one of its most essential protectors and bastions.

We are now about to decide by our vote whether we think we are wise enough to overrule the repeated decisions of the Congress relating to the sixteenth amendment—repeated every year since that amendment was adopted in 1913—and now do away with the immunity which the States and municipalities enjoy by virtue of constitutionalism—an immunity not expressed directly in the Constitution but expressed in the lives of our people as represented by the Congress of the United States and the Supreme Court of the United States. In time of war are we to stand for freedom by maintaining freedom's bastions, or are we to vote against it by opening the door to further centralization of power and removal of the protection which the States have enjoyed against encroachment upon a function which is absolutely essential to their existence? For my part, I shall support the amendment of the Senator from Ohio.

Mr. THOMAS of Utah obtained the floor.

Mr. GEORGE. Mr. President, will the Senator from Utah permit me to dispose of one brief matter and then suggest the absence of a quorum?

Mr. THOMAS of Utah. I yield.

Mr. GEORGE. Mr. President, the next amendment passed over is on page 91, after line 13, under the heading "Credit for dividends paid on certain preferred stock." The Senator from Maine [Mr. BREWSTER], the Senator from Alabama [Mr. BANKHEAD], and other Senators have brought the situation to the attention of the committee, and after conference with the staff and with the Treasury representative, we are of the opinion that the proposed amendment to the committee amendment ought to be adopted. The amendment to the amendment would simply strike out the word "nonvoting" in the committee amendment. It has been discovered that under the constitutions and laws of some of the States a strictly preferred stock is given certain voting privileges. Moreover, the Securities and Exchange Commission has required the insertion of a limited voting privilege in the issuance of some preferred stocks.

If that is the only feature of this particular amendment which caused it to be passed over, I am ready, with the consent of the Senate, to accept the amendment to the amendment, and let it go to conference. Is that agreeable to the Senator from Michigan?

Mr. BROWN. Mr. President, I am very happy to learn that the Senator has accepted the amendment to the amendment, because the situation in Michigan is similar to that in Alabama, Maine, and other States. I think the amendment to the amendment would add very much to the provision, and would carry out my own original idea in presenting it to the Finance Committee.

Mr. GEORGE. Mr. President, I ask unanimous consent for the present consideration of the committee amendment on page 91, after line 13, which has previously been passed over.

The PRESIDING OFFICER. The amendment will be stated for the information of the Senate.

The CHIEF CLERK. On page 91, after line 13, it is proposed to insert:

Sec. 134. Credit for dividends paid on certain preferred stock.

Section 26 is amended by inserting at the end thereof the following new subsection:

"(h) Credit for dividends paid on certain preferred stock.—

"(1) Amount of credit: In the case of a public utility, the amount of dividends paid during the taxable year on its preferred stock. The credit provided in this subsection shall be subtracted from the basic surtax credit provided in section 27.

"(2) Definitions: As used in this subsection and section 15 (a)—

"(A) Public utility: The term 'public utility' means a corporation engaged in the furnishing of telephone service or in the sale of electric energy, gas, or water, if the rates for such furnishing or sale, as the case may be, have been established or approved by an agency or instrumentality of the United States or by a public utility or public service commission or other similar body of the District of Columbia or of any State or political subdivision thereof.

"(B) Preferred stock: The term 'preferred stock' means stock issued prior to September 1, 1942, which on September 1, 1942, and during the whole of the taxable year was nonvoting stock the dividends in respect of which were cumulative, limited to the same amount, and payable in preference to the payment of dividends on other stock."

The PRESIDING OFFICER. Is there objection to the present consideration of the amendment? The Chair hears none.

Mr. GEORGE. Mr. President, I offer an amendment to the amendment on page 92, line 15, after the word "was", to strike out "nonvoting."

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Georgia to the amendment reported by the committee.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. GEORGE. I now suggest the absence of a quorum, before the Senator from Utah [Mr. THOMAS] begins his address.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Alken	Gerry	O'Daniel
Austin	Gillette	O'Mahoney
Bailey	Green	Overton
Ball	Guffey	Pepper
Bankhead	Gurney	Radcliffe
Barbour	Hatch	Reed
Barkley	Hayden	Reynolds
Bilbo	Herring	Rosier
Bone	Hill	Schwartz
Brewster	Holman	Shipstead
Brooks	Johnson, Calif.	Smathers
Brown	Johnson, Colo.	Smith
Bulow	Kilgore	Spencer
Bunker	La Follette	Stewart
Burton	Langer	Taft
Butler	Lee	Thomas, Idaho
Byrd	Lodge	Thomas, Okla.
Capper	Lucas	Thomas, Utah
Caraway	McCarran	Truman
Chandler	McFarland	Tunnell
Chavez	McKellar	Tydings
Clark, Idaho	McNary	Vandenberg
Clark, Mo.	Maloney	Van Nuys
Connally	Maybank	Wagner
Danaher	Mead	Wallgren
Davis	Millikin	Walsh
Downey	Murdoch	Wheeler
Doxey	Murray	White
Ellender	Norris	Wiley
George	Nye	Willis

The PRESIDING OFFICER. Ninety Senators having answered to their names, a quorum is present.

Mr. BROWN. Mr. President, will the Senator yield?

Mr. THOMAS of Utah. I yield.

Mr. BROWN. Mr. President, I ask unanimous consent that at this point in the Record there be printed the opinion of the Department of Justice on the constitutionality of the issue now before the Senate—the right of the Federal Government under our income-tax laws to tax the income from bond issues of State and municipal governments.

For the benefit of the Members of the Senate I desire to emphasize the conclusions reached by the Department:

The foregoing and an abundance of similar evidence permitted the conclusion to be reached in our study that the preponderant understanding of the States at the time of the ratification of the sixteenth amendment was that its adoption would in all probability carry with it the power to tax the income from State and municipal bonds.

We should like to reiterate, however, that the constitutionality of the proposed legislation does not depend exclusively upon the acceptance of our construction of the sixteenth amendment, namely, that the words "from whatever source derived" mean exactly what they say, and as so interpreted clearly embrace income from Government securities. With full confidence, the validity of our conclusion may rest upon the basic proposition previously discussed that no implied constitutional immunity from Federal taxation attaches to interest received from State and municipal obligations.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF JUSTICE,  
Washington, April 14, 1942.

HON. RANDOLPH E. PAUL,

Tax Adviser to the Secretary of  
the Treasury, Washington, D. C.

DEAR MR. PAUL: On June 24, 1938, Hon. James W. Morris, Assistant Attorney General in charge of the Tax Division of the Department of Justice, transmitted to the Honorable Herman Oliphant, general counsel of the Treasury Department, a comprehensive study of the constitutional aspects of the taxation of Government bondholders and employees. Copies of this study were also made available to the appropriate congressional committees.

You have requested our opinion on the constitutionality of the proposal by your Department to subject to Federal income tax the interest received hereafter on outstanding and future issues of State and municipal bonds, with special emphasis on legal developments subsequent to the publication of our study. We are pleased to comply with your request and submit the following views.

In our earlier study we expressed the following conclusion:

"It is believed that there can no longer be found in the decisions of the Supreme Court any rule of continuing authority which would raise a constitutional prohibition against applying the Federal income tax to State bondholders, officers, and employees."

You are no doubt aware that since that time the decisions of the Supreme Court on the question of constitutional tax immunity have all served to reinforce and confirm that conclusion. The trend toward a limitation of such immunity, which had developed when we published our study in 1938, has continued without interruption to the present date.

We are, of course, no longer concerned with the power of the Federal Government to tax the income of State officers and employees. The decision of the Supreme Court in *Graves v. N. Y. ex rel. O'Keefe* (306 U. S. 466), and the enactment of the Public Salary Tax Act of 1939, have removed that problem from the field of controversy. Taxation by both State and Federal Governments of the salaries of public employees is now an accepted incident of our fiscal system. The only remaining question is whether the income received from State and municipal obligations may be subjected to Federal taxation. In our view, the answer is as clear and certain as the solution of any legal problem can ever be prior to a final determination of the precise issue by the Supreme Court. It is our considered opinion that the Congress does have the power to tax such income.

It is, of course, true that the Supreme Court concluded in *Pollock v. Farmers' Loan & Trust Co.* (157 U. S. 429, 158 U. S. 601) that a Federal tax could not validly be imposed upon income derived from municipal obligations. That decision was based upon the theory that a tax on income was a tax upon the source from which the income was derived. Thus, a tax on the income from municipal bonds was the equivalent of a tax upon the bonds themselves, and, therefore, an unconstitutional burden upon the power to borrow. However, this reasoning has been completely discredited in later opinions of the Supreme Court. With the destruction of the premise of the *Pollock* case, its conclusion must also fall.

"The theory, which once won a qualified approval, that a tax on income is legally or economically a tax on its source, is no longer tenable . . ." said the Supreme Court in March 1939, in *Graves v. N. Y. ex rel. O'Keefe* (306 U. S. 480). Less than a year earlier in *Helvering v. Gerhardt* (304 U. S. 405), the Court had sustained a Federal tax upon the salaries received by employees of the Port of New York Authority. The claimed immunity, if allowed, would in the Court's opinion (p. 424) have imposed "to an inadmissible extent a restriction upon the taxing power which the Constitution has granted to the Federal Government." The imposition of a State tax upon the salary of a Federal employee was similarly held in the *O'Keefe* case not to place an unconstitutional burden upon the employing sovereign. *Collector v. Day* (11 Wall. 113), another landmark decision like the *Pollock* case, was thus overruled. The express denial in the *O'Keefe* case that a tax on income was the equivalent of a tax upon the source represented no new thought but was rather a reiteration of a principle which had been applied in the court's prior decision in *New York ex rel. Cohn v. Graves* (300 U. S. 308), and in *Hale v. State Board* (302 U. S. 95). There, too, it had been recognized that "income is not necessarily clothed with the tax immunity enjoyed by its source."

The opponents of the pending proposal urge that it would produce an unconstitutional "interference" with State governments. Translated into practical terms, the interference complained of is merely the increased cost of future public borrowing which might be occasioned by the tax. It is significant that this increased cost involves no discriminatory burden. Rather, it represents the effect of placing income from private and public sources upon the same plane of equality. The absence of any element of discrimination would be helpful in sustaining the constitutionality of the proposed tax.

Until the Supreme Court handed down its decision in *Alabama v. King & Boozer* on November 10, 1941 (314 U. S. 1), there was room for the view that, despite the decisions affecting public employees a constitutional immunity from taxation might possibly be accorded to Government bondholders. Mr. Justice Stone had stated in the *O'Keefe* opin-

ion, page 486, that there was no basis "for the assumption that any . . . tangible or certain economic burden is imposed on the Government concerned as would justify" a decision that the tax upon the employee's salary was invalid.

On the other hand, it is no doubt true that the issuing government would bear a part of the economic burden of an income tax imposed upon the bondholder. Nevertheless, this Department did not attach to the statement of Mr. Justice Stone the significance urged for it by those who have opposed the legislation now suggested. The recent decision in *Alabama* against *King & Boozer* confirms our view. It is now clearly established that the validity of a tax upon bond interest will not be affected by the increased likelihood that the economic burden will in some measure be passed on to the Government.

The question in the *Alabama* case was whether an Alabama sales tax, which was to be collected from the buyer, was unconstitutional in its application to purchases made by a contractor engaged by the United States under a cost-plus-a-fixed-fee contract. It was quite clear, of course, that the entire burden of the tax would be borne by the Government. In fact, the Government had agreed with the contractor that State taxes, if valid, would constitute part of the cost of the project and would be assumed and borne by the Government. Hence there was no uncertainty as to the economic effect of the tax as in the earlier case of *James v. Dravo Contracting Co.* (302 U. S. 134), which involved a lump-sum contract. The Supreme Court nevertheless sustained the State exaction. In the course of its opinion the Court made the following observation (pp. 8-9):

"So far as such a nondiscriminatory State tax upon the contractor enters into the cost of the materials to the Government, that is but a normal incident of the organization within the same territory of two independent taxing sovereignties. The asserted right of the one to be free of taxation by the other does not spell immunity from paying the added costs, attributable to the taxation of those who furnish supplies to the Government and who have been granted no tax immunity."

Thus, the Supreme Court finally laid to rest the theory that an economic burden in terms of increased governmental costs invalidates a tax. The earlier opinions in *Panhandle Oil Co. v. Knox* (277 U. S. 218), and *Graves v. Texas Co.* (298 U. S. 393), were held untenable so far as they supported the contrary conclusion.

A decision which supports State taxation of Federal cost-plus-a-fixed-fee contractors would operate at least equally to sustain a Federal tax imposed upon State bondholders. Both relationships rest upon contract; one involves the furnishing of supplies and services, the other money. The tax in each instance would increase the cost of governmental operation: In the case of the State tax on the Federal contractor, to the full extent of the tax exacted; in the case of the State bondholders, to some extent which is difficult of precise ascertainment. Paraphrasing the language of the Supreme Court in the *Alabama* case, we may therefore conclude that so far as a nondiscriminatory Federal income tax upon a holder of a State obligation enters into the cost of borrowing, that is but a normal incident of the organization within the same territory of two independent taxing sovereignties.

What has been said thus far as to the power of the Federal Government to impose a tax upon income received from State obligations applies with equal force to all interest hereafter received whether upon future issues or upon outstanding obligations. No constitutional question as to the validity of a retroactive tax is involved. (See *United*

*States v. Hudson* (299 U. S. 498), and cases cited therein.) The proposed tax reaches only future income, and is therefore entirely prospective in operation. It possesses the same constitutional validity as the income tax imposed by the Public Salary Tax Act of 1939 upon the income received after 1938 by all Federal judges, irrespective of the date of their appointment to office.

The assumption, which was formerly prevalent that interest received upon State securities was immune from Federal taxation, is analogous to the assumption of many years standing that under *Evans v. Gore* (253 U. S. 245), an income tax upon the salaries of Federal judges would be unconstitutional as a diminution of their compensation. The salaries of some Federal judges were made subject to the income-tax laws by the Revenue Act of 1932, which required that all compensation received by judges taking office after June 6, 1932, the effective date of the act, be included in gross income. Judges who had taken office prior to June 6, 1932, were thus given a statutory tax immunity. In the case of the bondholder, express statutory exemption was included in the act of October 3, 1913, and this provision was repeated in later acts. With the realization that tax immunity of judges who had taken office prior to June 6, 1932, was not a constitutional requirement, the Congress, by the Public Salary Tax Act of 1939, took the final step to remove it. The present proposal to tax future income of all State securities is therefore consistent with the procedure and objective of the Public Salary Tax Act of 1939. A further illustration of the application of the income-tax laws to future income arising out of transactions which were closed before the particular taxing provision was adopted may be found in *Burnet v. Wells* (289 U. S. 670). The grantor of an irrevocable trust was there held constitutionally taxable upon the trust income although the trust had been created before the enactment of the statute imposing the tax.

There is no constitutional basis for contending that income hereafter received upon outstanding State bonds must be free from Federal taxation because the obligations were issued and purchased on that implied or expressed understanding. The Federal Government was not a party to such contracts and the power of the Congress to enact a revenue measure is not fettered by any agreement between individuals or between an individual and a State. There are many illustrations of this proposition. Thus, in *Louisville & Nashville R. R. v. Mottley* (219 U. S. 467), an act of Congress which prohibited the enforcement of certain contracts for transportation was upheld, although applied to a preexisting contract. In *New York v. United States* (257 U. S. 591), an order of the Interstate Commerce Commission which increased an intrastate railroad rate was upheld even though the State charter had provided that a lesser rate should be charged by the company. See also *Norman v. B. & O. R. Co.* (294 U. S. 240).

It accordingly appears that no objection on constitutional grounds can be successfully raised against the proposal to tax the income hereafter received upon outstanding State obligations. Indeed, the assistant secretary of the Conference on State Defense has admitted that if Federal taxation of income arising out of future issues of State bonds is constitutional, "there remains no constitutional bar to Federal taxation of the income received from the bonds now outstanding." (Tax Immunity and the Revenue Bond, by Daniel B. Goldberg, a printed memorandum distributed by the Conference on State Defense, March 1940.)

The Department's study of 1938, referred to above, reached a second and alternative conclusion that irrespective of the weakened vitality of the Pollock case and *Collector v.*

*Day*, there is sound basis for a construction of the sixteenth amendment which would remove the immunity of the State bondholder and officer. We there examined at length the history of the ratification of the amendment and presented as exhibits the evidence which would support that conclusion. Accordingly, we refrain from entering into that phase of the problem in detail. One brief observation, however, seems appropriate.

At the hearings last month before the Committee on Ways and Means of the House of Representatives reference was made to the fears expressed in 1910 by then Governor Hughes, of New York, that the proposed sixteenth amendment would authorize the taxation of interest received from State and municipal obligations. Reference was also made to the subsequent assurances of Senator Root and Senator Borah leading to the conclusion that the amendment was adopted by the legislatures of all the States with the views of the latter two in mind. The statements of Governor Hughes and of Senators Root and Borah, and of many others, were gathered and commented upon in our study. It is significant that a large number of public officials (some agreeing and others disagreeing with the construction placed upon the amendment by Governor Hughes) urged that if the Hughes construction was correct, it furnished an additional ground for the adoption of the amendment. Among these was Frederick M. Davenport, to whom Senator Root's letter had been addressed, and Senator Brown, of Nebraska, who was the father of the joint resolution submitting the amendment to the States. It is also significant that the New York Legislature rejected the amendment in 1910 after the message of Governor Hughes, but ratified it subsequently under the administration of Gov. John A. Dix, who vigorously championed the broadest interpretation of the amendment.

The foregoing and an abundance of similar evidence permitted the conclusion to be reached in our study that the preponderant understanding of the States at the time of the ratification of the sixteenth amendment was that its adoption would in all probability carry with it the power to tax the income from State and municipal bonds.

We should like to reiterate, however, that the constitutionality of the proposed legislation does not depend exclusively upon the acceptance of our construction of the sixteenth amendment, namely, that the words "from whatever source derived" mean exactly what they say, and as so interpreted clearly embrace income from Government securities. With full confidence, the validity of our conclusion may rest upon the basic proposition previously discussed that no implied constitutional immunity from Federal taxation attaches to interest received from State and municipal obligations.

Very truly yours,

SAMUEL O. CLARK, Jr.,  
Assistant Attorney General.

Mr. THOMAS of Utah. Mr. President, there are times in the history of our country which become epochal in relation to various things which the Government has done. I deem the action of the Senate Finance Committee in reporting two propositions almost epochal insofar as they will affect, and affect for the better, the taxing habits of our Government.

Despite what has just now been said by the Senator from Vermont, I have felt, and I think others have felt with me, that when the people spoke for the sixteenth amendment they asked for and they received a power which Congress had at first been denied, and that that power, granted under the authority of the Con-

stitution, through the amending power, was meant for universal application in the ordinary sense in which I use that term. I do not mean that something from which no tax returns can be gained should be taxed merely in order to make taxes universal. I think it is perfectly proper and in keeping with the income-tax theory to permit the ordinary exemptions.

However, certainly the words "from whatever source derived" meant something. I have been told that every word in our Constitution is important, and especially important to constitutional lawyers, and that sometimes the weight of each word is equal to that of all other words. Of course, that is a fallacious statement, and no one would argue it.

However, we all know that an income tax had been attempted and had been denied by the High Court on constitutional grounds; that the sixteenth amendment was adopted in order to overcome a decision of the Supreme Court; and that with the adoption of the sixteenth amendment there was a change and a development of the American taxing powers.

The pending bill provides for a reduction of the exemptions so as to make it possible for the Federal Government to bring about taxation of income from municipal bonds and securities. It provides for a tax on gross income—a tax which, as I view the subject, is the most just of all taxes, because it is levied universally, without deductions, and without preferences. I hope and trust that this new proposal will become law, and that it may become a fundamental part of our income-tax procedure as time goes on. I say that, not as a constitutional lawyer, for I am not a constitutional lawyer, but as a matter of ordinary fairness as between individuals.

The sixteenth amendment was no sooner adopted than immediately the taxing power given Congress under the amendment started to be narrowed, and we soon learned that we could tax income from whatever source derived except judges' salaries; that we could tax income from whatever source derived unless it happened to be salaries of State officials or those receiving their money from State taxes; that we could tax income from whatever source derived unless it happened to be from a bond or security issued by a State or by a subdivision of a State. Gradually, through litigation, through contest, the words "from whatever source derived" were modified by condition after condition. Of course, if the fundamental theory in a democracy that people and things should be treated on the basis of equality is not accepted, then the narrowing of the taxing range seems logical to the man who likes special privilege; it seems logical to a person who believes that some should give and others should not; it seems logical to those who entertain the theory of taxation that there should be those who should not pay their just share of the burden.

Even when I was a beneficiary of tax interpretations I could never understand why my pay should not be taxed when the pay of a fellow professor in a neighboring institution was taxed.

I cannot even now understand the basis on which certain deductions are allowed. I cannot understand why—and this, perhaps, is an argument in favor of a tax on gross income—if I give a dime to somebody who needs it badly, I cannot be allowed a deduction in computing my tax, but if I give the dime to an intermediate agency, then I can be allowed the deduction, although the person who is to be the beneficiary will probably receive only 9 percent of the dime. That is one of the simple things to which, of course, great courts, and especially great lawyers who read decisions over and over again, never pay attention.

Mr. BROWN. Mr. President, will the Senator permit an interruption there, to allow me to interpolate a quotation from an editorial in the New York Times which says almost the same thing the Senator is now saying?

Mr. THOMAS of Utah. I should be glad to have the Senator do so, but I did not read the editorial.

Mr. BROWN. It is so close to what the Senator has stated that I think it buttresses and supports his argument. This was said at the time the sixteenth amendment was under consideration. Would the Senator mind if I read it?

Mr. THOMAS of Utah. I should be glad to have it read.

Mr. BROWN. The New York Times in an editorial published on March 2, 1910, said:

The question regarding the constitutional amendment enabling the Federal Government to lay a tax on incomes "from whatever source derived" is not a question regarding the conflict of laws, or for the construction of an obscure statute, involving difficult question of principle. It is a question addressed to the man in the street regarding the adoption of a new policy as to which his views should and will prevail. It is a question without roots in the past and looking wholly to the future. The Supreme Court perhaps might listen patiently to such an argument as Senator Root's, but the men in the street will pay no attention to it, and should not.

It is not a question for the Supreme Court. One man is theoretically as competent as another under universal suffrage to say whether the proposed constitutional enablement of the taxation of incomes from all sources means that incomes from some sources are not included, because they were not included when the Constitution was worded differently. The votes and the intelligence of the common people will and should settle this question. Indisputably they think and have a right to think that the proposition is that Congress may tax all incomes. The four words mean the same after the 4,000 words of Senator Root's argument are digested as before, and cannot be made to mean anything different, except by technicalities which can only prevail at the cost of defeating the people's will.

It is only necessary to find the meaning of a few easy words, and they are to be understood with the same freedom of natural and spontaneous interpretation as would be used in the case of private and personal interest. Only trouble can be made by substituting other words assumed to be equivalent, and arguing as though they were in the act, or that the meaning is otherwise because it ought to be otherwise. Millions will, through their Representatives, vote on the income tax who will never see Senator Root's argument, and who ought not to be troubled with it, their own interpretation

of the language being the very thing in question. To argue that some sources of income will not be taxable because they ought not to be taxable, or because they have not been taxable before, is beside the point.

Mr. THOMAS of Utah. I thank the Senator, and I appreciate his reading from the editorial. I know that that is the way it looks to the man in the street. I do not for a moment discount the type of deduction made by the man in the street, because our Government operates as a result of the deductions of its citizens. Men do not go to the ballot box and weigh every argument in favor of this man or that man. They vote in favor of the man who they think better represents their ideas of the American system of government.

I said in the beginning of my remarks that, either consciously or unconsciously, we have done remarkable things which have produced the real evolution in the development of our constitutional scheme. Those things have been done as the result of certain stimuli. I think that the two recommendations of the Finance Committee, which I am now discussing, come as the result of long study and because that committee has consistently tried to make the income tax a fair and a just tax, and these two additions will make it a fair tax and a more just tax.

The argument, Mr. President, about our Federal system, about the destruction of sovereignty, about destroying the rights of our cities and of our States by taxing a person's income which is received from a State bond, does not appeal strongly to me. We sometimes say we are taxing State bonds; but there is no tax on the bond itself; the tax is on the individual income derived from the bond. There is a difference, and we should not allow our words to be confused in that manner.

It has been stated so many times that our Government would be destroyed by some act that I marvel that it is able to exist at all. Consider what has been done within the last 5 or 6 years in merely getting rid of various exemptions. In each instance the same argument was used that is now presented; yet the Federal Government has not been destroyed, the powers of the State legislatures have not been disturbed, and the power of Congress has not been greatly developed; but there is more justice in the land and there is a better understanding in regard to the fundamentals of our constitutional system. Every time the Federal Government has stepped forward with some great act which has made the continuous development of our country possible, we have been met with the same sort of argument. Lincoln thought that if we could fight to save the Union surely we could spend a little money to build a railway in order to keep the country knit together. Some contended that was unconstitutional. Consider the road program; think of the argument back in Jackson's time, think of the argument in Wilson's time, that such a program was unconstitutional and that the States would be destroyed if the Federal Government stepped in and built a road in a State without the State's consent. Of course, it got the State's consent.

What would have become of our automobile industry, indeed, would we have had any automobile industry, if it had not been for the statesmanship of those men who resolved an impossible situation? Some States could not build roads. How, in the wide world, could the State of Nevada, with its meager population and wealth, build a road connecting California and Utah, for example, without some kind of Federal assistance? Who would use the road that went across Nevada—would it be merely the people of Nevada? No. Roads are built for all the people.

Mr. President, the American Union cannot be destroyed by uniting the people. That is physically impossible.

I stand for these two proposals advanced by the Finance Committee because they are a step forward in the taxing process.

We were told by President Buchanan that the Federal Government could not help the States in their educational programs, and he vetoed the Federal land-grant act; but a greater statesman took the place of President Buchanan and signed the measure which brought into existence the Federal land-grant colleges.

Was the Union destroyed because some new States and new Territories were allowed to educate their people on the same basis with the richer communities? What would our Government have been, what would have become of this Federal organization which, it is said, is now going to be destroyed again because the Congress of the United States suggests that John Doe, who owns a city bond, shall pay an income tax on the interest he derives from the bond, just as he pays an income tax upon the dividend of some corporation situated in the same city which issues the bond?

How is the Federal system to be destroyed in that way? What is our Federal system? Is it a loosely knit organization made up of 48 separate States like 48 blocks which can be picked up and divided and thrown around? That is not a reasonable conception of the Federal Government.

I think no man understands better than I do the contribution to the science of government and the art of politics made by the master minds who framed our Federal system, and the great theory there should be one government dealing with those affairs which were common to all the people, and a separate government dealing with those affairs which were common to just a few people. That is the essence of the Federal system. One division as dependent upon the other.

When the fourteenth amendment to the Constitution of the United States was written, what a wonderful epoch was begun by bringing into existence a definition of American citizenship. The fourteenth amendment is generally looked upon as an amendment which gave us a false doctrine in regard to persons, but it is an amendment which makes it possible ultimately for the poorer persons in the poorer and the weaker States who are underprivileged because of the places where they live, to share as American citizens should share rights and privileges equally because of their citizenship.

Probably the definition of citizenship was quite accidental, because those who wrote the amendment were thinking of other things; but it is the most statesmanlike, most forward looking notion, so far as the science of government is concerned, that can be found in any of the constitutional schemes of the world, because it gives us a key to something which Webster thought could not be done and which Calhoun thought could not be done. Both those men in this very body debated with the same logic. That sovereignty is indivisible, and that it must be one, and therefore must be in the national government, was contended by Webster. That sovereignty is indivisible, and must be one, therefore must be in the States, was contended by Calhoun. We know both statements to be fallacious. It is possible to divide sovereignty on a cooperative basis, and the fourteenth amendment says that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and"—and here duality comes into our scheme—"and of the State wherein they reside."

Mr. President, we have now, through these great mediums set up by the American Government, a key to governmental organization as large as we want to make it without in any sense destroying the individual or without in any sense destroying the community. That is the genesis of the American Constitution, and that is what has come as a result of growth in the American Constitution. That is what is in the American Constitution, because the fathers in writing the Constitution established, as Marshall proclaimed, a document which was to last through the ages, not to last so iron-bound that it would destroy itself, not even to grow under the idea which became dominant after we got away from Newton's balance theory and accepted as our great fundamental Darwin's theory of growth. We want to go even further than that, and we can go even further than that, because in the philosophy of citizenship enunciated by the fourteenth amendment we have a new idea about politics and a new ideal of government, government which can expand itself and take care of any evolution which may come.

Mr. LANGER. Mr. President, will the Senator yield?

Mr. THOMAS of Utah. I am glad to yield.

Mr. LANGER. I noted the distinguished Senator just mentioned politics. Yesterday the statement was made on the floor of the Senate that both the Democratic Party and the Republican Party in 1940 had planks in their platforms declaring in favor of taxing the income from State and municipal bonds. I therefore secured copies of the platforms, and have before me both the Republican and the Democratic platforms. After reading the plank in the Democratic platform I do not see how any Democratic Senator can help voting against the Burton amendment. This is the plank:

To encourage investment in productive enterprise, the tax-exempt privileges of future Federal, State, and local bonds should be removed.

I read it again:

To encourage investment in productive enterprise, the tax-exempt privileges of future Federal, State, and local bonds should be removed.

The distinguished Senator from Vermont [Mr. AUSTIN] said this morning that people had not voted on this question. Mind you, the Republican Party did not have any plank like this at all. They had no plank dealing with the subject. But the people of the United States—and I, myself, heard it mentioned from the platforms during the campaign—depended upon this plank, and thought that at last the income from the \$18,000,000,000 of bonds was going to be taxed. Yet, with amazement, I listened yesterday, as I have this morning, to Democratic Senators arguing against taxing such income, when, as a matter of fact, they were elected upon this very plank.

In my judgment, if the Senator will give me one more minute, it is exactly on a parallel with what happened here some months ago, when Wendell Willkie was before the Committee on Foreign Relations and was interrogated, as all will remember, by the distinguished Senator from Missouri [Mr. CLARK], and was asked about the various speeches he had made. It will be remembered that he said, "It was just campaign oratory."

Mr. BALL. Mr. President, will the Senator from Utah yield?

Mr. THOMAS of Utah. I yield.

Mr. BALL. I have heard the statement just made by the Senator from North Dakota repeated so many times that I am tired of hearing it. I was in the committee hearing when Mr. Willkie was questioned, and what the Senator has repeated is not a correct quotation.

Mr. LANGER. I will say to the distinguished Senator from Minnesota that before I rose on the floor today I consulted the distinguished Senator from Missouri [Mr. CLARK], who, I am sorry to note, is not present. I particularly inquired of him as to exactly what had been said, and he replied that Mr. Willkie not only said, in response to his interrogation, what I have quoted, but that when the Senator from North Dakota [Mr. NYE] repeated the question, Mr. Willkie made the same statement. I was not a member of the committee, but my information on the subject was received from the Senator from Missouri [Mr. CLARK] only a few moments ago.

Mr. President, it does not make any difference to me. I am neither a Republican nor a Democrat. However, I am interested in the amendment under consideration. The Republican Party of North Dakota had in its State platform almost identically the same language that is in the Democratic national platform, and I, for one, believe in living up to the platforms we run on. I believe the people have a right to depend on the platforms which the various political parties adopt, and, so far as I am concerned, I intend to carry out the pledge I made to my people and vote against the amendment.

Mr. BURTON. Mr. President, will the Senator from Utah yield?

Mr. THOMAS of Utah. I yield.

Mr. BURTON. I should like to comment briefly upon the statement which has just been made by the Senator from North Dakota in connection with what he read from the Democratic platform. I assume he will not regard me as being bound by that platform.

Mr. LANGER. I stated that it was not in the Republican platform. I understand the Senator from Ohio is a Republican.

Mr. BURTON. That is correct. In interpreting the Democratic platform, I believe that the members of the Democratic Party intend to abide by the Constitution of the United States, and, therefore, even though they may have placed that plank in their platform, not fully appreciating at the time its effect upon local governments, I think it may be properly assumed that they expect to proceed in a constitutional manner, and, under the decisions of the Supreme Court, the amendment presented by the committee is unconstitutional. If they wished to proceed in the manner indicated in their platform, then they would proceed by way of proposing a constitutional amendment.

Mr. LANGER. I agree to that. They can do it either way. If they adopt the amendment here and the Supreme Court holds it to be unconstitutional, then certainly they would go ahead and submit a constitutional amendment.

Mr. BROWN. Mr. President, will the Senator yield?

Mr. THOMAS of Utah. I yield.

Mr. BROWN. I call attention to the fact that, as I stated yesterday, although I did not have the exact language at hand, the Republican program committee, headed by the late Dr. Glenn Frank, in its report to the Republican National Convention used the following language:

We favor elimination of all tax exemptions of future issues of Federal, State, and municipal securities.

Mr. BURTON. Mr. President, will the Senator yield?

Mr. THOMAS of Utah. I yield.

Mr. BURTON. The report to which the Senator from Michigan referred was a report of a committee to the convention. The convention did not adopt that report on that point, but even that committee, I think, in its report, advocated only procedure by a constitutional amendment. The committee, of which the Senator from Michigan was chairman, which made an investigation some time ago of this matter, reported to the Senate a measure providing for taxation of State tax-exempt securities, I believe the Senator said, by a vote of 4 to 2, but when the measure came before the Senate, the Senate itself voted against such taxation by a vote of 44 to 30.

Mr. THOMAS of Utah. Mr. President, I am glad the Senator from Ohio brought up the constitutional question, not because I propose to answer it, but because I desire to tell of an incident. I think the Senator will grant that if we are acting unconstitutionally today, we probably acted unconstitutionally when we did away with other exemptions, actions which have been sustained by the courts

by reversals or at least by an evolution of the Court's idea of the Federal system.

In 1937 I had a discussion with the chairman of the Senate Judiciary Committee. He had introduced an amendment to the Constitution providing for overcoming the various exemptions in regard to bonds. I took the stand that a constitutional amendment was not necessary. I do not believe that a constitutional amendment is ever necessary to overcome a decision of the Supreme Court. Since its creation the Supreme Court has heard and considered only real causes.

Through its whole history it has refused to go into the field of advisory opinion. Every decision handed down by the Supreme Court is a decision dealing with a particular case. It is true that the dicta and the words of the judges in arguing the decisions have become the dominating thought, but those dicta have not become the dominating law of our land. If they had we would have had confusion worse confounded, and it would be impossible for any court to overcome a previous decision, because it would find itself engaged in such conflict of logic that it would forget the cause before it.

Mr. President, we all revere Justice Marshall, who wrote the opinion in the *McCulloch* versus Maryland case, but in that case he happened to make a statement which has been made the foundation for more false argument than probably anything else that Marshall ever said. He handed down a truism, a truism soon misquoted, a truism which is valid only to a certain extent, a truism which is utterly invalid in the experience of the United States.

The power to tax—

He said—

involves the power to destroy.

Soon politicians and judges were quoting Marshall's words as—

The power to tax is the power to destroy.

We know that taxation has been used in our own Government to destroy. But if, as argued, American liberty and the American federal system, the sovereignty of the free States, had depended upon a truism which is valid only to a certain extent, our Government would have hung by a thread so thin and so narrow that it would have disintegrated long ago. If the power to tax is the power to destroy, the States would have been destroyed time and time again.

Back in the last war I happened to be on a State pay roll. I would buy a railroad ticket and would not have to pay a tax. I would buy gasoline for a State car and did not have to pay the gasoline tax. I would buy tires for the State car and did not have to pay a tax on the tires. There were exemptions, exemptions, exemptions, simply because someone—not a court—but someone made a ruling that we dare not get into that field—we dare not—because Marshall away back in the *McCulloch* case said:

The power to tax is the power to destroy.

No, Mr. President, he did not say that. He said:

The power to tax involves the power to destroy.

Now we have changed all those things without destroying the sovereignty of the States. We have provided for the taxation of State salaries without destroying the power of the States. The only thing left is the taxing of the income on tax-exempt bonds.

Mr. President, what municipality in the United States is going to be destroyed if we start taxing John Doe because he receives some money from a municipal bond? Name the town, name the city, name the State. By a stretch of the imagination one can assume, I suppose, that all States and all cities are operated entirely on borrowed money; but they are not. Taxation of such income does not interfere with the taxing power of the local taxing units. It does not interfere with the taxing power of the cities. The argument is fallacious, just as fallacious as it has always been, when it has been put forth to stop some kind of improvement on the score that the power of the States would be destroyed.

Mr. President, in the past 4 or 5 years we have gone forward with a type of co-operation between the States and the Federal Government which may be spoken of as a system of borrowing money from the Federal Government instead of from private concerns. At any rate, most of the public-works program of the last several years has been built upon a cooperative system. There is no doubt that that system will be continued, first, because it represents an evolutionary notion.

Mr. BAILEY. Mr. President, will the Senator yield?

Mr. THOMAS of Utah. I yield.

Mr. BAILEY. I should like the Senator to discuss the proposition that taxation of income derived from State or municipal securities is taxation of the State or the municipality. I waive the question of the power to tax being the power to destroy. Is not the taxation of such income taxation of the city? I will give the Senator an illustration. A city issues its bonds, which are nontaxable, and sells them at a premium or at a very low rate of interest. But let us say the city issues its bonds and that the income from them is taxable. The purchaser will not pay the premium, or else the interest rate is increased. In either event the people of the city or the people of the State issuing the securities are required to pay higher taxes in order to pay the increased interest on the bonds or the difference on the principal if the bond is sold below par. What strikes me is that we are dealing here with an indirect tax on the cities, the counties, and the States of this country. That is not the power to destroy, but where is it in accord with our system of dual government, if we do have a dual government? There are some vestiges of it left. How do we reconcile that policy with our system of government? That is my question.

Mr. THOMAS of Utah. Mr. President, all I have said up to the present time has been an argument which could be used in answering the Senator from North Carolina. I will not repeat what I have heretofore said. I am glad the Senator calls it simply an indirect tax instead of a direct tax.

Mr. BAILEY. I should like to make the record straight on that point. All Federal taxes are indirect. We will make no progress by making a distinction. If we levied a direct tax it would have to be apportioned among the States under the Constitution. For that reason there are no direct taxes levied by the Federal Government.

Mr. THOMAS of Utah. Mr. President, if I had a share of bank stock which paid me a dividend, and my State took some of the dividend money in taxation, that would not be a tax upon the bank.

Mr. BAILEY. Does the Senator dispute the fact that a tax upon the income of a city security or a State security is a tax which is a taking by a Federal act from the city or the State, as the case may be?

Mr. THOMAS of Utah. It is taking State money, I grant, but we tax salaries of State officials, and that money comes out of taxes imposed by the State.

Mr. BAILEY. But the State is not under necessity in that case. It does not have to raise the salaries. That is a matter of discretion with the State. The State issues bonds of necessity. They are issued for necessary purposes. The city issues bonds of necessity. It does not do so by choice; it is because of necessity, by reason of the growth of the city, for the construction of water works, and so on.

Mr. THOMAS of Utah. I cannot understand the logic of the Senator. Surely it is just as necessary to pay the salary of the governor of the State. His salary may be paid with money raised from the sale of bonds, but I hope no State does so.

Mr. BAILEY. I know that the Senator is a very able scholar and a thoroughly reasonable man. He draws a distinction between taxing the income from a bond issued by a State and taxing the salary of the Governor of a State. We take nothing from the State when we levy a tax on the salary of the Governor. If the salary is \$10,000 and we take \$4,000, the State continues to pay \$10,000 for the services of the Governor. But when the State issues a bond, if the bond is subject to taxation, every purchaser knows it. The State must then sell the bond for less or pay a greater rate of interest. It is a case of necessity.

Mr. THOMAS of Utah. Granted; but I have sold bonds, and I have carried in the same portfolio bonds of this district and bonds of that city. I was not able to sell them on an equality. Let us take the State of Utah and compare it with the great State of Virginia, for example. Under the Senator's theory, in Utah we must pay more for money raised from the sale of bonds because, in theory, the man to whom the bonds are sold—

Mr. BAILEY. My very able friend sees the difference, without reflecting on a State, between a man with good security

and a man with none. I do not think the Senator's analogy will go very far.

Mr. THOMAS of Utah. But it holds in practice. Whenever a Senator says that when a State sells its bonds at a lower price than the price at which some other State sells bonds, that is a tax upon the people of that community, then I think my logic is just as valid as his. It is not a tax. It is because the bond is not worth as much.

Mr. BAILEY. I will not detain the Senator longer in his argument; but I should like to say that it does not appeal to me as being valid. Take the case of a man who has very little credit. Even in the District of Columbia, under the operations of a system devised by what we call the Sage Foundation, men pay as much as 32 percent for money. That is perfectly oppressive, hopeless, and outrageous. I do not approve it. Another man, a very able man, whose credit is good with everybody, obtains money at 1 or 2 percent. There is a difference in condition. There is no element of taxation. There is no element of compulsion. That is one of the unfortunate things due to differences in the conditions of men.

Consider the whole body of State, municipal, and county securities. There are others to come. There are schools to be built—and we have not gone as far in that direction as we must go—water lines to be laid, sewers to be built, and sanitary facilities to be established. They are comprised in the whole social fabric of municipal and State government. I have always thought that the States have a far greater social function than has the Federal Government. That is my doctrine; and that was the doctrine of this country until Mellon against Massachusetts, in 1922.

Suppose we should authorize the levying of the proposed tax. Immediately every State and every city would increase its interest rate, or reduce the premium. In any event, the effect would be a tax upon the State or the city. What is proposed by the bill is a taking by act of Congress. That troubles me very greatly. I do not like to see people escape taxation. The wealthy man who buys the bond of my city of Raleigh does not thereby escape Federal taxation. The city of Raleigh gets the benefit of it, and the people of the city of Raleigh are the people of the U. S. to that extent.

The argument about favoring the rich will not hold water. All we do is to permit the States, cities, and counties of the country to finance themselves; and the people of those States, cities, and counties get the benefit of it. It is universal in its application.

That, to my mind, is the nub of the trouble. If the Senator can clear it up, I shall not contend with him beyond the point where he convinces me.

Mr. THOMAS of Utah. Mr. President, I cannot be clear as to what is in any man's mind, especially after listening to the arguments of the Senator from North Carolina. However, other factors enter into the prices of bonds, and into the interest rates.

Mr. BAILEY. Of course, there are other things; but once we enact the proposed legislation, this factor will be constant.

Mr. THOMAS of Utah. Mr. President, without wishing to prolong the argument, let me say that if this year I buy a \$100 bond which pays 5 percent, and next year buy one which pays only 3 percent, I realize that there is a difference. We are talking about different things. Incidentally, I did not say a word about taxing the rich, and I never do so, because my theory of the income tax is that it ought to be universal. That is one of the arguments which I put forward. That is why I favor the gross income tax. It is fair. I think of the person who is taxed. All the logic in the world cannot remove the fact that the income tax is on the person who receives the income, and not upon the bond, regardless of the consequences upon the bond.

Let us suppose that I own a \$100 municipal bond, and a \$100 bond of a corporation within that municipality, each of them paying me 5 percent interest. On the one I pay a Federal tax, and on the other I pay no Federal tax. If we change the illustration and consider two persons, one of whom owns the municipal bond, and the other the bond of the corporation, we have one person who is exempt from taxation. Each receives exactly the same amount.

As I understand the sixteenth amendment—not as a great jurist would see it, probably, and not as a judge would see it in handing down a particular opinion—the theory was to permit the Federal Government to tax the income of persons everywhere, from whatever source derived. That is the way I read the sixteenth amendment.

Mr. BAILEY. That may be the current view, but it is not the view to which we have all been accustomed. The sixteenth amendment says that the Congress shall have the power to tax incomes from whatever source derived; but I have previously contended—and the contention is satisfactory to me—that that amendment must be read in connection with the whole Constitution. I think it can be contended with reason and force that it was never intended that we should tax the securities of cities, counties, or States as though they were corporations. I think the Senator is unfortunate in undertaking to put them in the same category. The United States Steel Corporation is a corporation engaged in an industry. However, a State is a body corporate engaged in government. That is the great difference. I have heard many a man say that a city should be conducted like a corporation; that a city is a corporation, and all the citizens are stockholders. That is a very superficial view. It may make an illustrative appeal to an audience; but a corporation is one thing and a government is another.

I do not believe the Senator is safe in undertaking to proceed on the idea that there is an analogy in the matter of taxation, at any rate, between tax-

ing income from the securities of a corporation and taxing the securities of a city, which is in corporate form, but which is infinitely more than a corporation. The Senator will agree with me that there is involved in a city all that is involved in the concept of government; but in a corporation there is involved merely the concept of managing a special interest.

Mr. THOMAS of Utah. However, through legal definition most cities are corporations.

Mr. BAILEY. Cities are incorporated, but that does not make them corporations.

Mr. THOMAS of Utah. I agree with the Senator. I should go very much further and say that no two city corporations are organized exactly alike. They are complex corporations; and therefore a rule about taxation may work in one community and may not work in another, because of the very complexity of the make-up. In one city there may be a city waterworks, a city streetcar system, and various other facilities owned by the city, which makes all the difference in the world.

Mr. BAILEY. There is a difference between imposing a burden on a corporation or business and imposing a burden upon a unit of government. We are dealing with a proposed action which is tantamount to a tax on another unit of government. It strikes me that that is the hurdle which we must all get over.

Mr. THOMAS of Utah. I will help the Senator over it by asking a question. Of course, I know that the Senator from North Carolina does not want to be convinced.

Mr. BAILEY. Let me say that I want to be convinced. I voted for the section. I have had a great deal of trouble in my mind about it. I have run into this very obstacle.

So I say to the Senator that he misunderstands me. I should like to be convinced. I should like to walk out of this chamber with a clear mind that I have done right. So if the Senator will convince me, I should like to have him do so.

Mr. THOMAS of Utah. Mr. President, I realize that I cannot convince the Senator. I realize, from the laughter all around me by my associates in the Senate that I have been put in a box, and that I cannot move out of it.

I believe that if the Senator from North Carolina thinks about the matter he will realize that by agreeing to the committee amendment the Congress of the United States would not be the imposer of a direct burden upon the municipalities. Any man who handles municipal bonds and who goes from bank to bank trying to find the high bidder, and who finally gets a bid that is 2 percent less, realizes that he does not get the bid which is 2 percent less as a result of any act of the Congress of the United States or of the Government of the United States. The burden which is imposed upon the taxpayer who buys the bonds is imposed by the banker or by the buyer of the bonds himself, and not by any act of the Government.

If, for instance, we assume that we shall be able to sell the bonds at a somewhat lower price, as we do, because the Federal Government says that the income from the bond issued by the instrumentality will not be taxed, of course that is valid. The purchaser pays more money for the bond because he can sell it for more money, and so on, and so forth. However, the Federal Government is not in the least responsible for that situation, and historically it is not legally responsible. It would be responsible for abolishing that advantage, and it is its abolition which I think is just.

Mr. BAILEY. Mr. President, let us consider a bond which yields  $2\frac{1}{2}$  percent net. Let us say it is a city bond. If we were to impose a tax upon it, so that it would yield  $2\frac{3}{4}$  percent or 2 percent or  $1\frac{3}{4}$  percent, according to the income of the purchaser, because we have graduated rates, immediately the purchaser would bid less for the bond unless the city raised the rate. There is the act of imposition. The starting point there is what the Federal Government did. The Senator will agree with me that the bond might sell at  $2\frac{1}{2}$  percent; the rate of return might vary with the war news.

However, here is the constant factor: If, as soon as the proposed tax is imposed upon the income from it, it sells at  $2\frac{1}{2}$  percent, at once the number of buyers in the market is reduced. At once we reduce the number of such buyers, and at once we reduce the par value. That is reflected either in selling at a premium or in selling below par.

I think that situation is what actuated the committee in heretofore exempting the income from bonds previously issued. The banks and insurance companies are filled with them. They have been the great purchasers of such bonds. If we take the income from past issues of bonds, we imperil the capital of thousands of banks and we injure a great many insurance companies. However, that is behind us.

Now we go forward and run directly into the proposition that any tax which may be levied under the authority of the bill which is before us will be reflected in an increased burden upon the city, the county, or the State, and that will be a burden upon the people of the city, the county, or the State, and by no means a burden upon any wealthy man who buys the bond.

Mr. THOMAS of Utah. I am sorry that the Senator used that last sentence if he was answering me, because I made no argument about what the wealthy man would make.

Mr. BAILEY. I was responding to the general argument; I did not hear the Senator from Utah say anything about it. That is the general argument.

I shall not interrupt the Senator another time; but now I should like to say that I think it was the Secretary of the Treasury, Mr. Andrew Mellon, who first recommended such a tax. I have not seen the report, but it was before the committee. He made a report, as alleged, that it would be unfortunate for the Federal Government to stand by and to permit a great body of tax-free securities

to be outstanding for people to buy and thereby escape taxes. Mr. Mellon was an able financier. I understand that he made \$100,000,000 or \$200,000,000. Of course, I do not profess to be in any such class.

However, I think he was mistaken. I do not think we are proposing to take money from wealthy men by way of taxation. I do think that we are proposing to necessitate additional burdens of taxation upon the people who would have to bear them—the people of the cities, the counties, and the States.

That is the point which struck me; but I assure the Senator that if he can convince me, I hope he will do so. I am open to conviction. I should dislike to think that my mind was closed.

Mr. THOMAS of Utah. No one can convince the Senator if he accepts his logic in regard to the imposition of a burden; but I do not accept the logic in regard to the imposition of a burden so far as one being imposed by the Congress of the United States is concerned.

Mr. BAILEY. I beg the Senator's pardon. If I lay a tax on United States Steel it can pass on the burden to the purchasers of steel. If I lay a tax on a city bond the city must pass on the burden to the people of the city. I think it is the imposition of a burden.

I assure the Senator that I shall not further interrupt him.

Mr. THOMAS of Utah. I thank the Senator most heartily.

Mr. President, I have somewhat lost the trend of my thought, because I was referring to only two points, and I had no idea that I should speak at such length.

I have commended the Senate Finance Committee for reporting the two propositions; I have done so on the simple basis that the trend of the taxing habits of the United States in regard to income taxes has been to narrow the exemptions. I continue that line of discussion on the theory that the more universal the tax the better the tax from a democratic standpoint; the fewer the exemptions the better the tax from a democratic standpoint; the fewer the exemptions the less opportunity for special privilege, special consideration, and special write-offs.

The problem about which the Senator from North Carolina has been talking is a problem, not in law, but in simple government. It is a governmental process: Shall we maintain a taxing system which in theory is supposed to be equal and universal—with a graduated scale, of course—but which in fact is not? That is the question. The tax is imposed upon the individual, the receiver of the income. I still stand by the theory of the amendment "from whatever source derived." I think it is valid; I think it is proper.

It is because of the exemptions which have been made, it is because of the write-offs, it is because of the various amounts which can be subtracted from this man's income but which cannot be subtracted from that man's income, that I have always maintained that a fair, square, and just income tax is one levied upon gross income. Therefore, I repeat what I said in the beginning, that, from

the standpoint of the growth and development of the taxing process, the Finance Committee has done a remarkable thing by recommending a gross income tax.

I started to tell of an incident of which I was reminded by the Senator from Ohio when he asked whether the Congress should proceed constitutionally or not. Of course, the Congress should proceed constitutionally; that is the only way in which it can proceed; but Congress does things in a different way today than they were done before, and the Supreme Court has changed its view as to the constitutionality of questions time and time again. I have never held that it took a constitutional amendment to overcome a decision of the Supreme Court.

We have adopted constitutional amendments to overcome such decisions, and the Sixteenth Amendment is one of them, but I believe that, as a theory of government, as a theory of logic, such a procedure is sometimes unnecessary. Therefore, in 1937, after the argument of the chairman of the Judiciary Committee, who said that the only way we could overcome various exemptions would be by constitutional amendment, I said if we could get another review of the question by the court we could overcome the exemptions by decision, because the court as then constituted would not stand by the Evans case and some of the other cases. I, therefore, submitted an amendment to the tax act of 1937, providing for a tax on gross incomes. I jokingly told the Members of the Senate who were members of the Judiciary Committee that I was going to write into the law the Constitution of the United States, and I quoted in my amendment the provision that there should be levied upon all incomes, from whatever source derived, and before any deductions were made one-half of one percent.

Of course, no one supported the amendment. To me it sounded like a simple amendment, Mr. President, but after the amendment was offered and was sent to the legislative counsel, when it came back it covered 29 full printed pages. That is how complex our taxing system has become; that is how disintegration has been setting in, and that is, in a little way, what is actually happening.

Since the adoption of the sixteenth amendment we have undertaken to tax income from whatever source derived, except in the case of the salaries of judges, and of State employees, and except in the case of bonds of certain kinds. The tendency of those exemptions was to narrow the taxing field. The first requirement of any government, if it is to grow and to build itself up, is to widen the taxing field constantly and everlastingly. It is an old truism that government must not tax that which produces but that which is produced, because when the capital structure is taxed ultimately the ability to pay taxes is destroyed.

Mr. BONE. Mr. President—

The PRESIDING OFFICER (Mr. SPENCER in the chair). Does the Senator from Utah yield to the Senator from Washington?

Mr. THOMAS of Utah. I am glad to yield.

Mr. BONE. Since we adopted the income-tax amendment to the Constitution—the sixteenth amendment—has the Supreme Court of the United States attempted to interpret the words “from whatever source derived” to afford a basis for the argument that the Federal Government cannot tax, for example, income from certain securities, or was that decision prior to the enactment of the present income tax law? I do not recall at the moment.

Mr. THOMAS of Utah. I cannot answer that question because I am not familiar with the decisions, but in deciding the *Evans* case I am sure that the Court brought in other parts of the Constitution instead of the sixteenth amendment, and I am sure that the practice which grew up after the last war, when the income tax became important, was developed entirely upon the fallacious interpretation of the decision in the *Pollock* case.

Mr. BONE. I never could follow the reasoning of the Court. It seems to have proceeded on some theory of contract, because the constitutional provision was too plain for words, that income, from whatever source derived, might be taxed. That does not require any interpretation, it seems to me. The people adopted that constitutional provision. So I have never been able to see the weight of the argument which has been advanced, that we have no inherent power to tax income. I think it is a matter of policy rather than of power.

I have not heard all the Senator's argument, but I assume it to be that Congress has the power by legislation to tax income from whatever source derived. It seems to me there can be no question about that, and I should like to see that particular principle of law laid at rest for once and for all, for I think that the theory which has been advanced that under the sixteenth amendment we cannot tax income from any source is fallacious.

Mr. THOMAS of Utah. I think the Senator from Michigan has a better answer to the Senator's question than I have, and I will ask him to reply to the Senator.

Mr. BROWN. The case of *Evans v. Gore* (253 U. S. 245, 1920) was a case involving the salary of a Federal judge. In that case the sixteenth amendment was referred to incidentally, but the basis of the decision in the *Gore* case was that the salary of a judge, under the constitutional provision, may not be diminished during the term for which he was appointed. The court held—I think erroneously—that the taxing of the salary of the judge was a diminishment.

Mr. BONE. That was a refinement of reasoning. It did not lower his salary; it merely taxed it after it came into his possession.

Mr. BROWN. It taxed it just as the salaries of all other citizens are taxed.

Mr. THOMAS of Utah. As a result of the decision, the average man on the street said that the judges were taking care of themselves.

Mr. BROWN. Very recently the case of *Evans against Gore* was overruled in *O'Malley v. Woodrough* (307 U. S. 272; 1939)—directly overruled and stated by the court to be overruled.

Mr. BONE. It seems to me, in the light of the clearly demonstrated viewpoint of the Supreme Court as presently constituted, that the court would never hold that we could not tax the salary of anyone. We are not certainly diminishing any man's salary by taxing it after it comes into his possession; we have not lowered his salary, but merely made him contribute the expense of running the Government and conducting the war. As to the principle of taxing income from municipal securities, I know a great many very persuasive arguments may be made on both sides of the question, and I listened with a great deal of interest to the argument of our friend the Senator from Vermont [Mr. AUSTIN], who probably presented as forcefully as anyone could the viewpoint that has been expressed many times by attorneys for municipal corporations, who have doubted the wisdom of such a tax for reasons apparent to every lawyer, but I think it is time to lay at rest the question of whether or not we can tax income from any source derived which is now exempt under the law.

Mr. THOMAS of Utah. I should like to see it laid at rest, because I know what was in the minds of the American people when they adopted the amendment.

Mr. BONE. That is correct.

Mr. THOMAS of Utah. Debating societies have talked about the income tax and discussed the great injustice which had been done to our Government because of the Supreme Court decision. We know the various theories in regard to the income tax which were brought into the argument in that case. It was stated that the tax would destroy our Government, destroy the Federal system, destroy everything that was good. We know of the argument made before the Supreme Court of the United States by a great jurist wherein he used words which shook the Nation, that the income tax was a communistic device and would bring about a change in the American standard of living for which the people would not stand. Such arguments make one laugh today, and yet the same argument is being advanced against the last step in the effort to overcome the extremely great injustice in regard to the spread of taxation.

Mr. BONE. Mr. President, will the Senator yield further?

Mr. THOMAS of Utah. I am glad to yield.

Mr. BONE. I do not believe that I am overstating the attitude of mind of the average man, but from my recollection of the argument advanced at the time the legislatures of the various States of the Union voted on the income-tax amendment which was proposed to them, I think I am only stating the truth, when I say that 999 out of every 1,000 human beings who read about it and talked about it believed sincerely that when

their State approved the amendment it gave the Congress the right to tax incomes in this country from whatever source derived.

That was the overwhelming view, that was the belief people honestly cherished about it, and it came with a great shock to find that some incomes were not to be taxed.

Mr. THOMAS of Utah. If the Senator will read the statement of the Governor of my State to the legislature in recommending that the amendment be not ratified, he will find that he argued in just the way the Senator has argued, that the levying of an income tax should be reserved as a system of taxation by the States; that the ratification of the amendment would take away certain powers from the States which they then had; and that if income from whatever source derived were taxed by the Federal Government, the States would never be able to impose a State income tax.

Mr. BONE. That argument is advanced now.

Mr. THOMAS of Utah. It did not destroy the Union—although Utah voted against the amendment, I am sorry to say.

Mr. NORRIS. Mr. President—

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Nebraska?

Mr. THOMAS of Utah. I am glad to yield.

Mr. NORRIS. Suppose one were going to write an amendment which would give the authority to tax as is proposed in the committee amendment, I wish the Senator would tell the Senate what language he could use which would be plainer, in the effort to bring about that result, than the language of the sixteenth amendment itself, “from whatever source derived.” Could the Senator think of anything that would be more comprehensive? Is there a possibility of any man framing words in the English language so as better to express the idea that power was given to tax all instrumentalities, than by the language of the sixteenth amendment itself?

Mr. THOMAS of Utah. The implication in the question of the Senator from Nebraska cannot be answered. There is no way of describing any source in language broader than “whatever source.”

Mr. NORRIS. Then it follows that it cannot be done, and if the Senators who say we have no right to impose that kind of a tax are correct, it is impossible to frame an amendment which would give us that right.

Mr. THOMAS of Utah. It would mean it would be useless to reduce laws to writing.

Mr. NORRIS. Certainly.

Mr. THOMAS of Utah. It would mean, further, that if we interpreted it loosely, even as it has been interpreted by the courts, the Constitution would become meaningless.

Mr. NORRIS. Absolutely.

Mr. THOMAS of Utah. And the Constitution becomes purposeless if, for example, we decided every constitutional question according to the last decision,

instead of going back to the original document itself.

Mr. President, just one more word. Appeal has been made for the preservation of freedom and for the preservation of our Federal system. I do not know how to answer that kind of an argument. I have been reading the history of the United States covering the last 150 years, and each time our Government has moved forward in an expansion of its constitutional powers, the destruction of liberty has been predicted, and the destruction of the Federal Government has been prophesied. Yet we all know that, man for man, the American citizen today is much ahead of the citizen of the United States 150 years ago.

We know that, State for State, each State is stronger than it was then, even in a comparative sense. We know that the scheme of our constitution has so progressed that today the people of the United States realize that the constitution is the companion of the American people in accomplishing their political and social ends.

Mr. LANGER. Mr. President, will the Senator yield?

Mr. THOMAS of Utah. I yield.

Mr. LANGER. During the course of the Senator's remarks I asked him a question and made a statement which was disputed by the junior Senator from Minnesota [Mr. BALL], in regard to what Mr. Wendell Willkie said during a hearing before the Committee on Foreign Relations of the United States Senate. Because of the fact that there has arisen a question of veracity between the Senator from Missouri [Mr. CLARK] and the junior Senator from Minnesota [Mr. BALL], I have secured a copy of the report of the hearing to which I have referred, and will quote from it.

Under date of February 11, 1941, Mr. Willkie appeared before the committee, and a colloquy took place, from which I will cite the part that is material to the present discussion:

Mr. WILLKIE. You said he would not get us into war.

Senator CLARK of Missouri. No; I made no such promise for the President.

Mr. WILLKIE. As to the statement about the President, in the course of the campaign I made a great many statements about him. He was my opponent, you know.

Senator CLARK of Missouri. You would not have said anything about your opponent you did not think was true, would you?

Mr. WILLKIE. Oh, no; but occasionally in moments of oratory in campaigns we all expand a little bit.

A short time later the Senator from North Dakota [Mr. NYE] interposed. The following colloquy ensued, which appears on page 905 of the printed volume of hearings:

Senator NYE. In the same vein, at about the same time you remarked:

"I believe we should keep out of war at all hazards."

Mr. WILLKIE. Yes; and I think this bill provides the method of keeping out of war.

Senator NYE. You stated further:

"We are being edged toward war by an administration which is alike careless in speech and in action."

I think you have already discussed your present views on that score.

Mr. WILLKIE. Yes, sir.

Senator NYE. One more assertion of yours, that of October 30:

"On the basis of his—"

That is, Roosevelt's—

"past performance with pledges to the people, you may expect we will be at war by April 1941, if he is elected."

Mr. WILLKIE. You asked me whether or not I said that?

Senator NYE. Do you still agree that that might be the case?

Mr. WILLKIE. It might be. It was a bit of campaign oratory.

I submit, Mr. President, that that part of the Democratic platform which was adopted in 1940, on the 15th day of July, in which it was said to the people of America:

To encourage investment in productive enterprise, the tax-exempt privileges of future Federal, State, and local bonds should be removed—

was a definite pledge made by the Democratic Party to the people of America.

Mr. THOMAS of Utah. Mr. President, may I ask the Senator from North Dakota, since he has brought political parties into the debate, if there is any party in any State, or in the Nation, that would put into a platform a pledge that they expected to maintain this exemption and expect to get anywhere with the American people?

Mr. LANGER. They did, and they were elected. They were elected on the pledge which they made in their platform that they would take away the privilege of tax exemption from the rich.

Mr. THOMAS of Utah. Yes, and the Republican Party would have said the same thing, but it remained silent on the subject. It did not dare say the opposite, did it? Is there any party in the United States that would go before the people on a platform making the opposite declaration?

Mr. LANGER. I do not know about that. I know the Republican Party was silent on the subject.

Mr. CLARK of Missouri. Mr. President, will the Senator yield?

Mr. THOMAS of Utah. I yield.

Mr. CLARK of Missouri. I have been informed that a few moments ago, while I was temporarily absent from the floor, the Senator from Minnesota [Mr. BALL] denied that Wendell Willkie had made a statement before the Committee on Foreign Relations of the Senate when it had under consideration the lease-lend bill—

Mr. CONNALLY. What difference does it make whether Willkie said it or not?

Mr. CLARK of Missouri. It makes some difference. The Senator from Minnesota undertook to question the statement of fact, particularly a statement in which I understand I was quoted.

Mr. President, the fact of the matter is that Mr. Willkie made the statement which has been attributed to him, not once, but twice, in the Committee on Foreign Relations, once in answer to a question by me, and some time later in answer to a question by the Senator from North Dakota [Mr. NYE]. There is no question about what Mr. Willkie said, and if the Senator from Minnesota was

present and failed to hear it, I am sure he was the only one in the large company which was present at the hearing who did fail to hear it. Not only that but it was quoted the next day in every newspaper in the United States and was made the subject of considerable editorial comment throughout the country.

I had nothing to do with injecting this question into the discussion here today, but I take this opportunity to call attention to the fact that on the same day, in the same hearing, on numerous occasions Mr. Willkie made a statement which was diametrically opposed to the statements which he has been making recently concerning a second front, when he predicted and asserted that a second front would not be necessary, that if we would merely send a few medium and heavy bombers, Germany could be bombed into submission in very short order, without any expeditionary force whatever being necessary.

Mr. GEORGE. Mr. President, if there is a question of what Mr. Willkie said, the Senator from Missouri is within his rights to have the RECORD speak the facts, but I believe that the passage of the pending tax bill is more important than what Mr. Willkie said during the last campaign, or what he is saying at the present time. I am sure of one thing, that Mr. Willkie furnishes so much text that if we undertake to debate it here we will not finish before the next Presidential election.

Mr. WALSH. Mr. President, I ask to have inserted in the RECORD a few of the many messages I have received from officials of the State of Massachusetts, including the commissioner of corporations and taxation, representing the Governor, and the mayor of Boston, in opposition to taxing the income from State and municipal bonds, which telegrams express my views on the pending question.

There being no objection, the communications were ordered to be printed in the RECORD, as follows:

BOSTON, MASS., August 5, 1942.

HON. DAVID I. WALSH,  
United States Senator,  
Washington, D. C.:

I strenuously urge your opposition to tax on municipal bonds. Such a tax would have serious effect on Boston's financial condition. Boston's views have been made known to Senate committee through Charles J. Fox, city auditor.

MAURICE J. TOBIN,  
Mayor of Boston.

BOSTON, MASS., July 27, 1942.

HON. DAVID I. WALSH:

Your attention is respectfully directed to fact that Massachusetts, in fact all New England, will be very seriously handicapped if proposal to tax income from State and municipal securities is permitted to be made a part of Federal revenue bill. The structure of financing both because of constitutional as well as statutory limitations prevents many municipalities from borrowing without advantage of tax exemption, and in many instances even though borrowing could be had increased cost for the money because of abolition of tax exemption would cause communities of Massachusetts to suffer much by way of increased expenditures, and a sum far in excess of what Federal Government possibly

could gain for authority to tax. Examination of inheritance-tax returns here in Massachusetts demonstrates in so-called large estates there is practically no volume of tax-exempt securities; carrying out suggestion that at least so far as Massachusetts is concerned rich do not go to the purchase of tax-exempt securities. There is indication however in respect to borrowing, which have been canceled and the places to which interest on the bonds are forwarded that tendency in Massachusetts is for the institutions—educational, charitable, and religious—to gather in municipal and State bonds and not individuals or corporations of great wealth or influence. In my opinion it would be very definitely of injury to Massachusetts if such a proposal as that of taxing State and municipal securities was made a part of Federal revenue program. It is urged that you oppose such enactment in interest of Massachusetts.

HENRY E. LONG,  
Commissioner of Corporation  
and Tazation.

MASSACHUSETTS COLLECTORS  
AND TREASURERS' ASSOCIATION,  
September 17, 1942.

The Massachusetts Collectors' and Treasurers' Association, organized some 35 years ago and representing the treasurers and collectors of the 351 municipalities in Massachusetts, in regular meeting assembled on this, the 17th day of September 1942, unanimously went on record as opposed to any congressional enactment which will make possible the taxing by the Federal Government of the interest from securities issued or to be issued by the State or its political subdivisions.

The secretary of the association, who attaches his signature hereto, was specifically instructed to call to the attention of the Members of the House of Representatives and the Senate of the United States the opposition of the association and its members to the passage of such legislation. In their opinion such an act would be detrimental to the well-being of Massachusetts and its cities and towns and would disregard that which has made it possible for Massachusetts and its cities and towns to give to its inhabitants through the years a form of benefit which has not been exceeded by any State in the Union. The inability of many municipalities to borrow, the extra cost to them, and the certainty that many things which should be constructed after the war cannot be undertaken if such a restriction is imposed upon them is more serious in the minds of the association than can be expressed in words as Massachusetts and its political subdivisions are strongly of opinion that, just as taking away their ability to tax, to affect in any way the borrowing of the State or its political subdivisions is comparable to destroying the sovereignty which they are anxious to maintain as well as the ability to furnish through their credit the very best by way of benefits to the individual inhabitants of Massachusetts whether expressed through State expenditure or through that of the cities and towns.

It is the opinion of the treasurers and collectors of Massachusetts that a vote to permit the taxing of interest from State and political subdivision securities will be a direct attack on the ability of the State and its political subdivisions to function as they have in the past and that such action is as unwarranted and unneeded as it is unwise and undesirable.

Because of the seriousness of this situation, the Massachusetts Collectors and Treasurers' Association addresses this, its first resolution of this kind in the whole period of its 35 years' existence, to the Members of Congress from this Commonwealth and urges, because

the situation is important enough to pass a resolution, that every possible step be taken to defeat the enactment of such legislation to the end that there will be no change in the policy which has proven wise through the years and which has been of extreme help to the continuity of activities by the cities and towns.

Respectfully submitted by order of the Massachusetts Collectors and Treasurers' Association representing the treasurers and collectors of the 351 cities and towns of Massachusetts.

NATHANIEL M. NICHOLS,  
Secretary.

CITY OF WORCESTER, MASS.,  
AUDITING DEPARTMENT,  
September 21, 1942.

HON. DAVID I. WALSH,  
United States Senate,  
Washington, D. C.

DEAR SENATOR WALSH: I am greatly disappointed to learn that the Senate Finance Committee has again voted to include the taxation of future issues of municipal and State bonds in the current revenue bill now being prepared for presentation to the Senate as a whole.

It is deplorable that a government that is attempting to raise eight billions in the proposed tax bill to support a war for freedom in all its phases, including constitutional rights, should include in the bill taxation that directly violates those rights.

Moreover, the Federal tax gain as a result of taxing bonds may be fifty millions, approximately only one-half of 1 percent of total, certainly a pittance revenue to attempt to recover in defiance of certain fundamental principles of our democracy.

Such enactment will add to the cost of local government without providing any substantial compensation revenues for the Federal Government. The fiscal freedom of State and local government is in great danger; also, a probable failure of government to survive the additional burden of increased taxes.

Massachusetts occupies an outstanding position among the other States in her sound financial structure, and that of her cities and towns, and I believe the proposed legislation would do more to endanger her standing than any other possible act of the Government.

As a financial official of the second largest city in Massachusetts, I earnestly ask you to vote against the inclusion of taxation of municipal and State bonds.

I hope I shall hear from you with the assurance that you will vote against a violation of State right.

Sincerely yours,  
HENRY A. ALLEN, City Auditor.

CITY OF BOSTON,  
AUDITING DEPARTMENT,  
City Hall, September 15, 1942.

HON. DAVID I. WALSH,  
Senate Chamber,  
Washington, D. C.

DEAR SENATOR WALSH: The proposal to levy a tax on the income from future issues of municipal securities will place a heavier burden on cities and towns within this Commonwealth than on any other municipalities within the country. This is due to the fact that since taxes are not due and payable until November 1, our cities and towns for 10 months of the year must finance ordinary maintenance requirements by the issuance of revenue anticipation loans. According to the latest "Statistics of Municipal Finances" issued by Mr. Waddell the 39 cities of the Commonwealth in the year 1939 issued roughly \$125,000,000 temporary notes. This is an item of borrowing which munic-

ipalities in other sections of the country do not face.

Another item of borrowing peculiar to Massachusetts is that in connection with relief payments. Under current statutory provisions municipalities are required to provide in their current budgets amounts equal to a fixed percentage of the prior year's welfare expenditures. When this requirement has been satisfied they are privileged to borrow the balance of their estimated relief expenditures. In 1939 borrowings of this character were slightly in excess of \$14,000,000.

Treasury officials have claimed that the taxation of future issues will place no great immediate burden on municipalities since for the duration of the war municipal borrowings for capital improvements will be necessarily curtailed. This argument entirely overlooks the two peculiar types of borrowing already pointed out and makes no allowance for the problems which will be faced by municipalities at the close of the war. If our cities and towns are to participate in the post-war program of public works they should not be faced with the added interest burden which everyone agrees will develop if the income from municipal securities is to be subject to Federal income tax. It is a matter of record that the tax rates of Massachusetts municipalities are among the highest in the country. In the interest of the owners of real and personal property in this State I trust you will see your way clear to oppose the proposal to tax municipal securities when it reaches the floor of the Senate and thus prevent the imposition of an added tax burden on our local taxpayers.

Sincerely yours,  
CHARLES J. FOX,  
City Auditor.

Mr. SMITH. Mr. President, I do not wish to detain the Senate, but I feel it my duty to express my appreciation of the speech made by the Senator from Vermont [Mr. AUSTIN].

I am surprised that the argument concerning the power of the Federal Government to tax incomes derived from bonds issued by municipalities and States has revolved around the question of the money involved. That does not concern me. I think the powers of the sovereign States, which are coordinate with the Federal Government in our dual form of government, should be kept inviolate. The State governments have the right to pass laws and levy taxes, and they feel that they are entities of the Government, and have a right to issue bonds, and to carry on their business as they see fit.

Mr. President, I have observed with a great deal of uneasiness the gradual encroachments of the Central Government upon the States. Every move we make is along that line. I am glad the Senator from Vermont made the speech he did today upholding the rights of the States, the counties, and the municipalities, which have developed so wonderfully in our country. I would rather risk the chance of having the country kept on an even keel through the continuance of the power reserved in the 48 States, in their sovereign capacity, than having this body undertake to keep the Government on an even keel. Our people have elected us to this body, and are looking to us to interpret the Constitution, and to deal fairly with them. Do we take into consideration the powers reserved in the States? I doubt very seriously

whether a great percentage of the membership of this body has seriously studied the Constitution and the decisions of the Supreme Court with respect to that twilight zone which lies between the reserved and the delegated powers.

Mr. President, I consider the committee amendment, which would grant to the Federal Government the power to tax securities of States which are now tax exempt, to involve one of the most serious questions to come before the Senate. It is not a question of dollars and cents. It is a question of exercising what the people of the States consider to be their rights and their powers. To impose a tax on their instrumentalities of course curtails their power. I shall never vote to permit the Government of the United States to exercise such power, to usurp the power over the States.

I felt particularly uplifted when the argument in favor of States' rights was made today by the Senator from Vermont. I used to believe that we had three coordinate branches of government, the legislative, the judicial, and the executive. It seems to me that the power of government has been narrowed down now almost to one branch, and I shall not be a party to contributing to such narrowing of power.

I am amazed that Senators should stand on the floor of the Senate and argue over the words of the sixteenth amendment, "from whatever source derived." We can argue that language to a *reductio ad absurdum*.

Mr. President, I stand here today trying to keep inviolate, so far as it is in my power to do so, the right of the States to exercise the power they have heretofore had, the power held by them up to the present time, to attend to their own affairs and not be overlorded by a great central government. I believe in State rights. I believe in individualism. I cannot understand why Senators, for the sake of obtaining a little tax revenue, will endeavor to destroy the very essence of our dual form of government. State legislatures are rapidly becoming more nominal adjuncts to Washington. The people of the States are not paying much attention to their legislatures any more. They are more and more looking to Washington. In Washington we have handed out benefits to the tune of several billion dollars. I do not know whether that action is constitutional or not. However, the Constitution of the United States now seems to be obsolete. Every move we make is a move to discredit it.

I am greatly concerned about the trend which the argument in the Senate has taken, that in order to obtain certain taxes the splendid system of State government shall be destroyed.

I hope we can vote on the Senate committee amendment today, and that it will be rejected and that the amendment of the Senator from Ohio [Mr. BURTON] will be adopted.

Mr. LEE. Mr. President, I rise to speak for a few minutes in opposition to the Burton amendment, or rather, I shall speak in support of the committee amendment, which proposes to withdraw the special privilege of tax exemption from local and State bonds. In 1909 the

Senate, by a vote of 77 to 0, passed a joint resolution which later resulted in the adoption of the sixteenth amendment.

The House passed the legislation by a vote of 318 to 14. Then the sixteenth amendment was referred to the States for ratification, the first States ratifying it in 1909 and the last States ratifying it in 1913. All but 3 of the 48 States in the Union ratified the sixteenth amendment.

The sixteenth amendment to the minds of the people in the streets, to the minds of the people on the farms, carried only one meaning, and that is the meaning contained in the language of the amendment itself, which is one of the short amendments. The language is:

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

That language is so plain that the people of the country understood it to mean that if the amendment were adopted Congress would have power to lay and collect taxes on incomes from whatever source derived. There was no quibble over the meaning of the language at that time. The people of the States sent their Representatives and Senators to the State legislatures with instructions to vote for that amendment, believing that they would thereby stop up the last loophole which permitted tax dodging. The people understood the language. It was only after the lawyers got hold of it and began to split hairs over it that it began to have several faces and several different meanings.

Mr. President, I wish to illustrate my point. In my section of the country the preachers representing different denominations sometimes have denominational debates, which are sometimes called religious debates, and those debates wax warm. One time they were having a debate on the subject of baptism. The debate took place under a brush arbor and great crowds were gathered. The discussion was about a preacher named Philip who was hitchhiking his way along the road. He saw a eunuch of great authority riding along in a chariot. Philip thumbed a ride and the eunuch picked him up. Philip noticed the eunuch was reading in the Bible from Isaiah. After some discussion the eunuch decided he wanted to be baptized, and this is the language describing what occurred:

And as they went on their way they came unto a certain water and the eunuch said, See, here is water; what doth hinder me to be baptized?

And Philip said, If thou believest with all thine heart, thou mayest. And he answered and said, I believe that Jesus Christ is the Son of God.

And he commanded the chariot to stand still: and they went down both into the water, both Philip and the eunuch; and he baptized him.

The point of debate was who baptized who. One of the debaters raised the question that by the language of the Scripture one could not tell who baptized who, because the Scripture says—

And he baptized him.

Another debater, who wanted to prove that Philip baptized the eunuch, saw a little colored boy sitting on the fence nearby and he called him.

Of course it scared the little fellow at first, and he turned a few shades lighter, but finally he climbed down off the fence and came to the platform on which the debaters sat. The preacher invited him to come to the platform, which he did, and said to the boy, "Now sit down and listen." So the preacher read this passage of the Scripture to him. Then he read it to him again, and said, "Now son, in your mind who was it that was baptized?" The little boy answered back without hesitation, "Well, I do not know, sir, but I think it was the man who wanted to be."

I use that to illustrate the simplicity of language when one wants to understand it, and the people wanted to understand the sixteenth amendment when it said:

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived.

It has been argued in this debate that when we lay a tax on a man's income, simply because it comes from a local or State bond, we are taxing the local government or taxing the State. Has it ever been argued, by the same token, that when we tax the income of the farmer—if any poor farmer ever had enough income to reach up into the income-tax brackets—we are laying a tax on the farm? If we are, it is unconstitutional, because such a tax is an *ad valorem* tax, and the Federal Government has no power to levy a tax on a man's farm.

Has it ever been argued that when we tax a lawyer's income we are levying a tax on the practice of law? Has it ever been argued that when we tax the income of a merchant we are laying a tax on the merchant's grocery business? It has not. When he receives an income, it is identified as his. He puts it in the bank, and he is taxed according to that income.

It is argued that by this amendment we are trying to lay a burden on the communities and States. No such thing is true. We are merely trying to withdraw a special exemption, because as things stand today the States and communities are the only authorities which can issue bonds which are tax exempt.

Mr. CONNALLY. Mr. President, will the Senator yield?

Mr. LEE. I yield.

Mr. CONNALLY. Under the Senator's construction of the sixteenth amendment, does he contend that the language "from whatever source derived" includes any income from any source?

Mr. LEE. That is what it says.

Mr. CONNALLY. Is that what the Senator construes it to mean?

Mr. LEE. That is what it says. Of course I do.

Mr. CONNALLY. Does the Senator contend that under that language the Government could tax a township in Oklahoma which receives \$100,000 in taxes from the people? That is income to the township. Could the Federal Government tax that income, or income received in the form of taxes by a drainage dis-

trict, a school district, or a road district? The sixteenth amendment says "from whatever source derived."

Mr. LEE. It says that Congress shall have power to lay the tax. If Congress should lay the tax, I suppose it would have the right to collect it; but I do not think Congress would lay such a tax.

Mr. CONNALLY. Why not, if the Senator wants to tax everything?

Mr. LEE. I do not want to tax everything. Would the Senator vote to lay such a tax? Such a tax measure would first have to pass through the Congress.

Mr. CONNALLY. Of course. The Senator says that the Federal Government could tax the annual taxes raised in a township or city. Would he favor such a tax?

Mr. LEE. No.

Mr. President, I believe in equality. One of the things which made the tax collector in ancient history very unpopular was the inequity of taxation. The people are willing to pay taxes if they know that the taxes are levied in all fairness.

Let me illustrate the situation as it is today. I made a few computations with respect to Oklahoma. A married man living in Oklahoma who operates a store and has an income of \$5,000 has to pay income taxes amounting to \$146.22. A man living beside him who has an income of \$5,000 from tax-exempt securities, State or local bonds, does not pay a thin dime. Is that fair? Do the people approve that? I do not think so.

Again, if a married man living in Oklahoma has an income of \$10,000 from the rental of apartment houses and other properties after he has paid his property and paying tax, he pays an income tax of \$737.85; but if a man living next to him has an income of \$10,000 from school bonds which he has purchased, he does not pay a thin dime. Do the people approve that? I think not. I know they do not.

Again, if a married man living in Oklahoma has an income of \$50,000 derived from the oil business in my State, he pays an income tax amounting to \$11,132.41. If right beside him there lives a man who has an income of \$50,000 from State bonds, he does not pay a thin dime. Does any Senator think that the people approve that? Did not the people have that situation in mind when they sent their State representatives to the State legislatures to vote for the sixteenth amendment to give Congress the power to lay and collect taxes on incomes from whatever source derived? I think they had exactly that in mind.

Take another example. We say we do not have a capital levy, but I maintain that an ad valorem tax is a capital levy. If a farmer does not make enough from his farm to pay the ad valorem tax, what happens? The tax assessments accumulate until he loses his farm. His farm is taken. His capital is levied upon and taken; yet, as was pointed out by the Senator from Michigan [Mr. BROWN] a man in the same community may have an income of several million dollars, 44 percent of which is from tax-exempt se-

curities, on which he does not pay a dime of tax. However, the poor farmer who does not have enough income to get into the income-tax brackets has his farm taken away from him because he cannot pay the taxes on it, when there are others in the same community with him who enjoy the special privilege of exemption.

I have heard two Senators make the statement that "I am not one who proposes to soak the rich." I am not either; but neither do I propose to give the rich a special exemption. I submit that this offers the rich a special exemption. Did any Senator ever hear of a poor man buying an issue of community bonds, school bonds, State bonds, water bonds, or sewer bonds? Did any Senator ever hear of a day laborer buying such bonds? Have we ever heard of any poor people buying such bonds?

Suppose a man has an income of \$5,000, and he buys some 3-percent tax-exempt bonds. To him the exemption privilege is worth two-tenths of 1 percent. The Senator from Michigan pointed out yesterday that to a man with an income of \$100,000 a tax-exempt bond bearing 3 percent interest is worth more than a taxable bond bearing 20 percent. Yet we are told that the exemption privilege is not worth anything to the rich. I ask Senators to answer that argument.

Mr. President, from 1909 to 1913 the people approved a fair and equitable taxing plan for taxing the people according to their incomes and their ability to pay. Congress passed the bill. The House passed it by a vote of 318 to 14, and the Senate by a vote of 77 to 0. Forty-five of the 48 States approved it, and it became law. Then it was nullified by judicial decision. The court said that it did not mean what it said. Those who today are opposing the withdrawal of this special privilege believe that the court then was right, but a later court, acting upon a case involving the salary of an employee of the Home Owners' Loan Corporation, reversed that decision, giving the Congress the power to lay taxes upon income from the Federal Government and from States.

As has been pointed out, our Democratic Party said in its 1940 platform:

To encourage investment in productive enterprise the tax-exempt privileges of future Federal, State, and local bonds should be removed.

I do not see how any member of the Democratic Party can repudiate that plank in the platform, that pledge and promise to the people.

Furthermore, President Roosevelt, in his message to Congress on April 25, 1938, said:

Whatever advantages this reciprocal immunity may have had in the early days of this Nation have long ago disappeared. Today it has created a vast reservoir of tax-exempt securities in the hands of the very persons who equitably should not be relieved of taxes on their incomes.

He thereby recognized that the rich have a special advantage.

Both the States and the Nation are deprived of revenues which could be raised from those best able to supply them.

Later in his message President Roosevelt said:

Tax exemptions through the ownership of Government securities of many kinds, Federal, State, and local, have operated against the fair or effective collection of progressive surtaxes. Indeed, I think it is fair to say that these exemptions have violated the spirit of the tax law itself by actually giving greater advantages to those with large incomes than those with small incomes.

He later said:

I therefore recommend to the Congress that effective action be promptly taken to terminate these tax exemptions for the future.

That was the request of the President of the United States in 1938. We still have not complied with it. In my opinion, here is the chance, the last chance we shall have, to comply with his request and to terminate the tax exemptions. In this crisis, when we are so badly in need of additional revenues, when we are so desperately seeking every reservoir from which we might raise income with which to pay for this war, I am amazed and surprised to find in the Senate opposition to taxing a man's income regardless of its source.

This is our last opportunity, in my opinion, to close this one loophole, to stop this last inequity, to remove this special privilege to a special class.

The argument has been advanced that there is nothing of a reciprocal agreement as between the local communities and the Federal Government, that there is no reciprocity. However, let me remind the Members of the Senate that the local communities can tax the property in those communities, and that the Federal Government does not try to tax the property in those communities. With respect to the States, the Federal Government has offered, and is willing to have, reciprocity of taxation.

The identity of the source of the income is lost when the individual receives the income. Does the individual have three or four different bank accounts, and when he places the money in the bank does he say, "The money in this account came from bonds, the money in that account came from labor, the money in the other account came from investments"? No, indeed. He has one account, in which he deposits all his income; and on that income he is subject, by all the laws of equity and fairness, to pay the same tax that I pay and that John Q. Citizen pays and that all others pay. The people expect us to levy the tax accordingly, and certainly so now, when we are in need of revenue with which to pay for the war.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Ohio [Mr. BURTON].

Mr. AUSTIN. Mr. President, I arise to request unanimous consent that I be allowed to have a certain matter printed in the RECORD. During my remarks an interrogatory was propounded by the Senator from Illinois which I was unable to answer, but which the distinguished majority leader, the Senator from Kentucky, was able to answer, showing that

in 1861 the Congress levied a direct tax upon the income of the citizens of the several States.

The secretary of the minority has brought to my attention an important statute which seems to me to have a bearing upon the conscience of the Congress with respect to the matter, and perhaps indicating the vigilance of the States in respect to it. It is Twenty-six United States Statutes at Large, page 822, chapter 496, an act to credit and pay to the several States and Territories and the District of Columbia all moneys collected under the direct tax levied by the act of Congress approved August 5, 1861. I ask unanimous consent to have a copy of the statute printed in the RECORD, because it includes not merely the States, the Territories, and the District of Columbia, but also the inhabitants who paid the tax, when they could be ascertained.

I see that the Senator from Illinois is in the Chamber. I am glad he is here, so that he will know about this act of Congress passed in 1891 recognizing the principle of immunity, and restoring what had been collected by the tax law of 1861.

Mr. President, I renew my request to have the statute printed in the RECORD as a part of my remarks.

There being no objection, the statute was ordered to be printed in the RECORD, as follows:

#### Chapter 496

An act to credit and pay to the several States and Territories and the District of Columbia all moneys collected under the direct tax levied by the act of Congress approved August 5, 1861.

*Be it enacted, etc.,* That it shall be the duty of the Secretary of the Treasury to credit to each State and Territory of the United States and the District of Columbia a sum equal to all collections by set-off or otherwise made from said States and Territories and the District of Columbia or from any of the citizens or inhabitants thereof or other persons under the act of Congress approved August 5, 1861, and the amendatory acts thereto.

Sec. 2. That all moneys still due to the United States on the quota of direct tax apportioned by section 8 of the act of Congress approved August 5, 1861, are hereby remitted and relinquished.

Sec. 3. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to reimburse each State, Territory, and the District of Columbia for all money found due to them under the provisions of this act; and the Treasurer of the United States is hereby directed to pay the same to the Governors of the States and Territories and to the Commissioners of the District of Columbia, but no money shall be paid to any State or Territory until the legislature hereof shall have accepted, by resolution, the sum herein appropriated, and the trusts imposed, in full satisfaction of all claims against the United States on account of the levy and collection of said tax, and shall have authorized the governor to receive said money for the use and purposes aforesaid: *Provided*, That where the sums, or any part thereof, credited to any State, Territory, or the District of Columbia, have been collected by the United States from the citizens or inhabitants thereof, or any other person, either directly or by sale of property, such sums shall be held in trust by such State, Territory, or the District of Columbia for the benefit of those persons or inhabitants from whom they were collected, or their legal representatives: *And provided further*, That no part of the money collected from individuals and to be held in trust as aforesaid

shall be retained by the United States as a set-off against any indebtedness alleged to exist against the State, Territory, or District of Columbia in which such tax was collected: *And provided further*, That no part of the money hereby appropriated shall be paid out by the governor of any State or Territory or any other person to any attorney or agent under any contract for services now existing or heretofore made between the representative of any State or Territory and any attorney or agent. All claims under the trust hereby created shall be filed with the governor of such State or Territory and the Commissioners of the District of Columbia, respectively, within six years next after the passage of this act; and all claims not so filed shall be forever barred, and the money attributable thereto shall belong to such State, Territory, or the District of Columbia, respectively, as the case may be.

Sec. 4. That it shall be the duty of the Secretary of the Treasury to pay to such persons as shall in each case apply therefor, and furnish satisfactory evidence that such applicant was at the time of the sales herein-after mentioned the legal owner, or is the heir at law or the devisee of the legal owner of such lands as were sold in the parishes of St. Helena and St. Luke's in the State of South Carolina, under the said acts of Congress, the value of said lands in the manner following, to wit: To the owners of the lots in the town of Beaufort, one-half of the value assessed thereon for taxation by the United States direct-tax commissioners for South Carolina; to the owners of the lands which were rated for taxation by the State of South Carolina as being usually cultivated, \$5 per acre for each acre thereof returned on the proper tax-book; to the owners of all other lands, \$1 per acre for each acre thereof returned on said tax book: *Provided*, That in all cases where such owners, or persons claiming under them, have redeemed or purchased said lands, or any part thereof, from the United States, they shall not receive compensation for such part so redeemed or purchased; and any sum or sums held or to be held by the said State of South Carolina in trust for any such owner under section 3 of this act shall be deducted from the sum due to such owner under the provisions of this section: *And provided further*, That in all cases where said owners have heretofore received from the United States the surplus proceeds arising from the sale of their lands, such sums shall be deducted from the sum which they are entitled to receive under this act. That in all cases where persons, while serving in the Army or Navy or Marine Corps of the United States, or who had been honorably discharged from said service, purchased any of said lands under section 11 of the act of Congress approved June 7, 1862, and such lands afterward reverted to the United States, it shall be the duty of the Secretary of the Treasury to pay to such persons as shall in each case apply therefor, or to their heirs at law, devisees, or grantees, in good faith, and for valuable consideration, whatever sum was so paid to the United States in such case. That before paying any money to such persons the Secretary of the Treasury shall require the person or persons entitled to receive the same to execute a release of all claims and demands of every kind and description whatever against the United States arising out of the execution of said acts, and also a release of all right, title, and interest in and to the said lands. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$500,000, or so much thereof as may be necessary to pay for said lots and lands, which sum shall include all moneys in the Treasury derived in any manner from the enforcement of said acts in said parishes, and not otherwise appropriated. That section 1063 of the Revised Statutes is hereby made applicable to claims arising under this act without limitation as

to the amount involved in such claim: *And provided further*, That any sum or sums of money received into the Treasury of the United States from the sale of lands bid in for taxes in any State under the laws described in the first section of this act in excess of the tax assessed thereon shall be paid to the owners of the land so bid in and resold, or to their legal heirs or representatives.

Approved, March 2, 1891.

Mr. O'MAHONEY. Mr. President, it is my purpose to support the amendment offered by the Senator from Ohio [Mr. BURTON], and I desire very briefly to state to the Senate my reasons for so doing.

As I view the question, it is not at all a question of constitutionality. I have no personal doubt at all that the Congress has the power to tax incomes from whatever source derived, and that such power includes the power to tax income derived from State, municipal, and county bonds.

As I see it, Mr. President, the question is purely a realistic one: Are we now to levy a tax for the purpose of raising money with which to win the war and to pay for the war, or are we to endeavor to change the system of taxation? If it were a matter of raising money with which to pay for the war, my vote might be different from what it will be; but an examination of the facts clearly demonstrates that there is no possibility of raising any substantial sum by the proposed method.

Mr. President, it is an easy thing to assume that the wealthy people of the country have tremendous incomes from which could be drawn, and should be drawn, large sums to help finance the Government, particularly in this crisis. Of course, there are large incomes; but the significant fact which seems to me to have been utterly overlooked is that in the aggregate the incomes of the very wealthy are but a drop in the bucket.

I hold in my hand a press release which was issued by the Secretary of the Treasury on Friday, October 2, 1942, giving the figures for taxable and nontaxable individual income and defense-tax returns for 1940, filed during the year 1941. The significant revelation to be found in the statement from the Treasury is that during the year 1940, 1,866 persons had a net income of between \$100,000 and \$150,000; only 626 persons had a net income of from \$150,000 to \$200,000; 273 persons had an income of from \$200,000 to \$250,000; 167 persons had an income of from \$250,000 to \$300,000; 166 persons had an income of from \$300,000 to \$400,000; 86 persons had an income ranging from \$400,000 to \$500,000; 79 persons had an income ranging from \$500,000 to \$750,000; 33 persons had an income ranging between \$750,000 and \$1,000,000; 28 persons had an income ranging between \$1,000,000 and \$1,500,000; 8 persons had an income ranging between \$1,500,000 to \$2,000,000; 6 persons had an income ranging between \$2,000,000 and \$3,000,000; 4 persons had an income ranging between \$3,000,000 and \$4,000,000; 2 persons had an income ranging between \$4,000,000 and \$5,000,000; and 1 person had an income of \$5,000,000 and over.

Mr. President, if my arithmetic is correct, that means that in 1940 there were

3,345 persons who had an income of \$100,000 or more.

Mr. LUCAS. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield.

Mr. LUCAS. Is that gross income or net income?

Mr. O'MAHONEY. It is net income, as figured before the deduction of personal exemptions.

Mr. President, this is the significant fact: If the entire income of those 3,345 persons were to be totaled it would be found to amount to \$691,424,000. In other words, if we were to take, not the normal tax and the surtax, but the entire income of every individual in the United States receiving \$100,000 or more, the total receipts to the Treasury would be only a little more than \$691,000,000, and we are spending at the rate of \$6,000,000,000 a month.

To me it seems perfectly obvious that it is not worth \$691,000,000 to the Treasury of the United States to cut off the preferential treatment which, by the existing law, we give to the political subdivisions of the United States, the States, the counties, and the cities.

I am not concerned about the amount of taxes which may be paid by the wealthy, Mr. President, but I am tremendously concerned that the States, the cities, and the counties of the United States shall not be deprived of this preferential treatment. I believe that the present law grants a preference, certainly, but it is a preference granted to local political subdivisions which sadly need it in a time when counties and cities, and even States, are turning to the Federal Treasury, with its tremendous deficit, for money with which to do the things which they cannot do without such assistance. It seems to me to be of the utmost importance that we should maintain the present situation and that we should do nothing to jeopardize it. Very little is to be gained by withdrawing this preferential treatment.

Mr. President, there are in the United States about as many counties as there are individuals receiving these huge incomes. I am not thinking of the individuals with the huge incomes, but I am thinking of the counties and of the market they will have and which they should have for their securities.

It was a perfectly amazing discovery to me when I found that, as a matter of fact, the wealthy in the United States receive only a very small proportion of the total income. During the studies of the Temporary National Economic Committee we published a monograph, Monograph No. 3, entitled "Who Pays the Taxes?" On page 7 of the monograph is to be found a diagram showing the disposition and distribution of consumer income in the United States for 1938-39. This makes, what is to me, a very amazing revelation. All the people in the United States who received income of \$20,000 a year, and over, constitute only three-tenths of 1 percent of all recipients of income, and they received only 9 1/2 percent of the total income. I should have imagined that the total income of all those receiving \$20,000 or more would amount to a perfectly amazing proportion. I thought it could not

possibly be less than one-fourth or one-third of the total income of the United States, but that is not the fact; it is less than 10 percent.

Mr. LEE. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield.

Mr. LEE. Do the Senator's figures include nontaxable income, as well as taxable income?

Mr. O'MAHONEY. Yes; this study was made under the auspices of the T. N. E. C., in cooperation with the W. P. A., and we endeavored to find the total income.

Mr. LEE. Including the tax-exempt income?

Mr. O'MAHONEY. Oh, yes; that is my understanding. For example, let us refer to those in the next bracket, who receive incomes of \$15,000 to \$20,000 a year. They constitute only two-tenths of 1 percent of the number of consumer units in the United States, and their total aggregate income is only 2.3 percent of the total income of the United States.

If we were to go to the other end of the scale and take, for example, those who receive between \$2,000 and \$3,000 a year—a very modest income—we would find that they constitute 11.2 percent of the number of consumer units, so-called. Their income amounts to 17.4 percent of the total. In other words, the total aggregate income of persons receiving between \$2,000 and \$3,000 a year is almost twice as much as the total aggregate income of all the persons receiving \$20,000 or more a year.

Let us take the same situation with respect to the figures given out a few days ago by Secretary Morgenthau. According to his statement 393,844 persons filed income-tax returns showing incomes between \$4,000 and \$5,000, for a total of \$1,742,796,000. In other words, the number of taxpayers in this small group which represents incomes of between \$4,000 and \$5,000 a year received in the aggregate more than twice, indeed, almost three times, as much as all those who received incomes of \$100,000 or more.

Mr. President, I ask that I may be permitted to put these tables in the RECORD at this point.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

*Distribution and disposition of consumer income*

A. CONSUMER UNITS AND INCOME

[By income brackets]

Income brackets	Percent of consumer units	Percent of aggregate income received
I. Under \$500	17.0	3.4
II. \$500 to \$1,000	29.5	14.4
III. \$1,000 to \$1,500	22.1	17.6
IV. \$1,500 to \$2,000	13.1	14.6
V. \$2,000 to \$3,000	11.2	17.4
VI. \$3,000 to \$5,000	4.6	11.0
VII. \$5,000 to \$10,000	1.5	7.0
VIII. \$10,000 to \$15,000	.4	3.2
IX. \$15,000 to \$20,000	.2	2.3
X. \$20,000 and over	.3	9.1

[Net income classes and money figures in thousands of dollars]

	Taxable and nontaxable returns by net income classes	Number of returns	Net income	Personal exemption	Credit for dependents	Earned income credit	Total tax
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Taxable individual returns:						
2	With net income:						
3	Under 1 (estimated)	528,784	482,599	393,893	376	48,260	1,771
4	1 under 2 (estimated)	2,005,086	4,094,796	2,330,981	53,832	409,480	57,156
5	2 under 2.5 (estimated)	914,050	2,083,858	1,288,998	26,594	208,386	24,601
6	2.5 under 3 (estimated)	912,174	2,504,204	1,593,632	58,844	250,420	24,673
7	3 under 4 (estimated)	1,014,623	3,474,787	1,831,912	173,230	335,628	45,372
8	4 under 5 (estimated)	393,844	1,742,796	703,116	144,756	157,156	32,515
9	5 under 6	217,751	1,189,297	384,342	89,191	99,728	27,998
10	6 under 7	128,602	832,567	224,733	55,183	66,824	24,049
11	7 under 8	83,395	622,841	143,596	35,223	47,800	22,554
12	8 under 9	58,473	495,429	99,807	24,421	36,454	21,398
13	9 under 10	44,686	423,513	76,132	18,685	30,386	21,146
14	10 under 11	33,701	353,174	57,001	14,013	24,550	19,993
15	11 under 12	26,843	308,273	45,261	11,071	20,856	19,375
16	12 under 13	21,217	264,818	35,601	8,015	17,519	18,317
17	13 under 14	17,548	236,548	29,431	7,261	15,345	17,778
18	14 under 15	14,831	214,794	24,877	6,120	13,626	17,441
19	15 under 20	47,289	813,235	78,762	19,413	44,093	80,995
20	20 under 25	24,258	540,085	40,221	9,896	23,126	72,939
21	25 under 30	13,920	379,737	22,899	5,534	13,417	65,135
22	30 under 40	14,792	508,221	24,198	5,849	14,497	109,369
23	40 under 50	7,464	331,895	12,123	2,874	7,533	87,730
24	50 under 60	4,155	226,908	6,802	1,621	4,264	69,518
25	60 under 70	2,648	164,712	4,118	1,004	2,651	56,327
26	70 under 80	1,625	121,329	2,641	606	1,704	45,315
27	80 under 90	1,176	99,408	1,882	426	1,218	39,578
28	90 under 100	781	73,956	1,260	313	802	31,328
29	100 under 150	1,866	223,988	2,939	643	1,880	105,337
30	150 under 200	826	107,300	1,015	220	610	56,649
31	200 under 250	273	60,839	426	97	257	33,484
32	250 under 300	167	45,625	282	59	153	26,405
33	300 under 400	166	56,863	273	62	154	34,317
34	400 under 500	86	38,893	144	26	69	23,462
35	500 under 750	79	46,696	122	20	68	28,556
36	750 under 1,000	33	27,474	50	14	27	17,582
37	1,000 under 1,500	28	33,445	44	8	18	21,219
38	1,500 under 2,000	8	13,614	13	2	6	9,589
39	2,000 under 3,000	6	14,079	8	(32)	5	10,028
40	3,000 under 4,000	4	13,443	7	2	3	10,594
41	4,000 under 5,000	2	8,090	4	1	2	6,282
42	5,000 and over	1	5,075	2	(32)	1	3,094
43	Total	7,437,261	23,279,203	9,463,548	916,107	1,898,980	1,440,967
44	With no net income	46	2,551	67	5	34	473
45	Total, taxable returns	7,437,307	23,276,652	9,463,615	916,112	1,899,014	1,441,440

Mr. O'MAHONEY. Mr. President, I wish to remark that the point of the issue before us is simply this: We are not voting for or against a substantial income to the Federal Treasury; we are not voting for or against the extremely wealthy; we are voting directly on the question whether the political subdivisions of the United States shall continue to have a market for their securities, which is protected by the law.

At a time, Mr. President, when power in the United States and all over the world is being constantly centralized, I think it is the supreme duty of every person who believes in maintaining the principle of local government and local authority to support local authority by preserving the law as it now stands.

Mr. LA FOLLETTE. Mr. President, we shall never have an equitable tax system in this country until the privilege of tax exemption is withdrawn from the municipal, county, and State levels of government. It is true in time of peace, with low income-tax rates insofar as individuals are concerned. In time of war, with the rates in the pending bill going to 87.4 percent on the top bracket, this haven of refuge for the wealthy taxpayer becomes a form of special privilege. It is like a cancer eating at the vitals of the democratic process.

I have been amazed as I have sat through the debate today, to hear on the one hand that Senators are opposed to the committee amendment because it does not tax the income from existing and outstanding tax-exempt securities, and on the other hand to hear Senators say that they cannot support the committee amendment because it does not raise any revenue for the war. I am to some extent caught on the horns of that dilemma myself. I have voted in the Senate time and time again for placing a tax on the income from so-called tax-exempt securities, because I have no shadow of a doubt that the Federal Government has the power to tax them and because I have always believed that the income-tax system could never be just or equitable with this island of refuge for the wealthy taxpayer. But, Mr. President, in time of war it becomes absolutely essential that we remove these special privileges.

I have prepared an amendment which provides for the taxation of the income from outstanding securities. I am sorry I am not in a position to offer it now, so as to give an opportunity to vote for it to those who have risen in this debate and said that if there was only some revenue involved they would be delighted to vote for the amendment.

The time has come when we should make a beginning in this direction, even if we cannot succeed in achieving the whole objective. Let no man doubt that with appropriations and contract authorizations now already exceeding \$200,000,000,000, the time will come when if the committee amendment is enacted into law, revenue will be obtained from an income tax levied on securities which are now tax-exempt.

It is estimated that, if we were to tax the income derived from so-called tax-

exempt securities under the pending bill, we would secure \$225,000,000 of additional revenue. If we defeat the amendment offered by the Senator from Ohio [Mr. BURTON] and begin to remove this privilege, the time will come when those who are sweating to pay the interest and the principal upon this gigantic indebtedness will be relieved by reason of this tax exemption having been withdrawn.

I have been very much surprised to hear ardent advocates of Federal aid for this, that, and the other thing rise on the floor of the Senate and say that the proposal contained in the committee amendment is an assault upon the rights of the States. Yesterday, one Senator who, like myself, is an ardent advocate of Federal aid for vocational education, rose on the floor of the Senate and said that he was opposed to the committee amendment because it would enable the Federal Government to secure revenue from the securities issued by his State for the support of education.

Mr. President, I say you cannot have your cake and eat it, too. Either the States must assume full responsibility for meeting all the problems which go with modern society, or they must yield up an obsolete, an outworn, an unjustified special privilege.

At this time, Mr. President, when the Government is engaged in a struggle for its very life, to have special pleaders surround the corridors of the Capitol asking for a retention of special privilege is discouraging to me. This is a time when municipalities, counties, and States are no longer burdened by the problems of unemployment, and, therefore, they are no longer in the position where they must utilize their resources for vast public improvements. On the contrary, the Federal Government is shouldering the full cost of putting in the utilities for the vast defense housing program which is being constructed, part of which is permanent in character, and is being built by private enterprise, and which will inure to the benefit of the communities in which it is being built. For them to come here and attempt to overwhelm the Congress by their concerted drive against this proposal is to me a shocking indication that even in this dire hour of the Nation's necessity selfish interests and those who desire to retain special privilege are not conscious of the situation which confronts the people and their Government.

I said in connection with another amendment, and I venture to repeat it now, that we are in the most desperate fiscal and financial crisis that any nation in the written history of the world has ever faced. It is no answer, Mr. President, to say that a particular amendment will raise only \$225,000,000, or that it will raise only \$150,000,000. I recognize that as against the vast expenditures which we are making, any particular amendment may seem to shrink into insignificance, but if we follow that rule, we will never in the aggregate adopt a sufficiently heavy tax program to enable the Government to weather the fiscal storm and to maintain its credit. We must

have the courage to strike down these special privileges, not only for the purpose of removing them as special privileges, but also for the purpose of strengthening the fiscal program of the Government for a long and desperate war.

There are today approximately \$20,000,000,000 of tax-exempt securities outstanding. Under the existing law the Government is losing an estimated \$184,000,000. Under the rates in the present bill the income loss will be \$225,000,000 a year. This is a large slice of income, and if the Burton amendment is defeated, and the principle of the Senate committee is adopted, ultimately the taxpayers of this country, who are forced to pour their hard-earned dollars into the Treasury, will be assisted by those who are escaping their fair share of taxes because of the tax-exemption privilege these bonds have.

Mr. President, I wish to point out also that as the income-tax rates have risen, the statistics of the Treasury Department show that those in the upper brackets have been accumulating more and more of their income from this tax-exempt source.

In this connection I point out that in 1928, net estates over \$100,000 and under \$200,000 had only 1.6 percent in tax-exempt securities income. In 1940 that income had risen to 3.1 percent.

In 1928 estates of \$1,000,000 and over derived 6.2 percent of their income from tax-exempt securities. By 1940 that figure had risen to 15.1 percent.

These are the most recent figures obtainable, but I venture the assertion that if we could know what they are today under present tremendously increased rates, we would find that this tendency of the rich and those in the upper brackets to accumulate more and more of these securities has gone on apace, and with the constantly rising tax rate, unless we check this privilege, the situation will become all the more aggravated.

Mr. President, it has been said here that one cannot cite the cases of a few individuals and prove any theory. I hold in my hand a table appearing in the hearings of the House committee. The table shows the incomes of 25 individuals. It shows the total amount of their incomes. It shows the total amount of income derived from tax-exempt securities, and it shows their savings under the rates proposed by the Treasury. I shall read only a few of these items at random, but I do not think they are untypical of those with large incomes.

Let me say, before I quote from this table, in response to the arguments advanced by the Senator from Wyoming [Mr. O'MAHONEY] that for the very reason that a large part of the percentage of the national income is in the lower brackets, we should remove the tax-exemption privilege from those who are in the upper brackets. Otherwise that portion of the load is dumped on those with the least ability to carry the burden.

Individual No. 1 has State and local interests amounting to \$221,000. His taxable net income from other sources is \$601,000. His total income is \$823,800.

The revenue loss to the Treasury from tax exemption under the rates proposed is \$195,000.

Individual No. 8 in the table has State and local interests of \$820,000. He has taxable net income of \$835,000. He has a total income of \$1,656,000. His tax-exempt interest is \$605,000. His taxable interest is \$1,251,000. The revenue loss from the tax exemption is \$646,000. Under the bill as reported from the committee the revenue loss would be \$722,000.

Individual No. 21 on the list has State and local interests amounting to \$1,083,000. His taxable net income from other sources is \$4,321,000. His total income is \$5,405,000. His tax-exempt interest is \$3,380,000. His taxable interest is \$4,251,000. The revenue loss from the tax exemption is \$871,000. The revenue loss under the bill as reported from the committee would be \$953,000.

Mr. LEE. Mr. President, will the Senator yield?

Mr. LA FOLLETTE. I yield.

Mr. LEE. Does the argument that the principle is minimized because there are only a few of such inequities appeal to the Senator?

Mr. LA FOLLETTE. Mr. President, I have just said that, on the contrary, the very fact that there are relatively few cases is more reason for removing the exemption.

The exemption amounts to a considerable sum of money, for the Treasury has estimated that under the rates proposed by the Finance Committee, if we were to tax the income derived from so-called tax-exempt securities, we would secure an additional amount of \$225,000,000 a year. That is not "hay" in anybody's language, regardless of the deficit which we face.

Mr. President, I ask unanimous consent that the two tables to which I have referred, together with the appendix following the statement of my individual views, be incorporated in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibits A, B, and C.)

Mr. LA FOLLETTE. Mr. President, we have not hesitated to interfere with the lives of individuals in this war. We have exercised the plenary power which government possesses. We have reached into every home in America, and by the long arm and power of the Government we have taken the flower of the young manhood of America and put it into uniform. We are sending it overseas to die on foreign shores, on 42 fronts. Did we inquire, Mr. President, whether we were taking any privileges away from those young men? We did not. We assured them, however, that they were being sent abroad to fight for the fundamental principles upon which this Government was predicated. Those principles include the principle of equality among men.

I do not wish to have anything I say seem invidious; but today I have heard legalistic arguments about whether we have the right to eliminate this special privilege or not, in the face of an opinion by the Assistant Attorney General of the United States, an opinion by the General Counsel of the Treasury Department, and

opinions rendered by able Members of this body to the effect that we do have the power.

Mr. President, there may be doubt in the minds of some upon this question. There is none in my own mind. I have always believed that the sixteenth amendment struck down the Pollock case for good. Be that as it may, let us assume that one takes the other position. If he is fair-minded at all he must admit, it seems to me, that there is a grave question of constitutional power involved. If so, let us resolve it in favor of striking down special privilege when we are taking the lives of young men to defend this Nation. Let us permit the Supreme Court to decide this question, rather than conduct a legalistic argument here.

Mr. President, I speak with feeling. I hope that I am not exceeding the bounds of propriety in debate, but I feel deeply on this question. I feel deeply because I think the time has come, if this democracy is to survive, when we must demonstrate that we have the courage to strike down special privilege at a time when young men by the millions

are about to be asked to die for the preservation of this Government. Do you think the young man coughing up his guts on the Sahara Desert feels that he is getting a square deal when one man can get \$750,000 of tax exemption from a special privilege?

Mr. President, I fear this will be a long war. The question of the morale of the people will ultimately determine whether or not this Government survives. The only way we can maintain morale when the casualty notices descend upon the homes of America like snow in a Montana blizzard is to maintain equality of sacrifice so far as it is humanly possible under the circumstances.

I will give up anything I have in this world to maintain democracy, to maintain this Government, and I think the young men of this country are ready, willing, and anxious to give up everything they have. However, in all fairness they should know that those who are here on the home front—the soldiers of democracy in positions of power—have the courage to insist that in this war there shall be equality of economic sacrifice as well as of flesh and blood.

#### EXHIBIT A

TABLE No. 2.—State and local government securities as a percent of gross estate, by size classes of net estate, estate tax returns filed in 1928-40

Filing year	Net estate <sup>1</sup> (in thousands of dollars)				
	100 under 200	200 under 300	300 under 500	500 under 1,100 <sup>2</sup>	1,100 and over
	State and local government securities as percent of gross estate <sup>3</sup>				
	Percent	Percent	Percent	Percent	Percent
1928	1.6	2.3	2.7	4.3	6.2
1929	1.6	1.8	2.2	4.5	6.0
1930	1.4	2.4	3.0	3.6	7.3
1931	1.9	2.5	4.2	4.8	9.2
1932	2.2	2.6	5.0	8.3	13.3
1933	2.9	5.1	6.6	11.2	21.9
1934	3.4	4.4	5.8	10.0	23.9
1935	3.6	5.7	6.7	11.0	14.4
1936	3.0	5.4	6.3	8.2	12.5
1937	3.1	5.3	5.7	9.2	11.4
1938	2.9	4.4	5.3	8.0	16.1
1939	3.2	4.4	7.1	11.6	22.7
1940	3.1	3.6	6.2	8.8	15.1

<sup>1</sup> Before specific exemption.

<sup>2</sup> Includes securities of Territories and insular possessions.

<sup>3</sup> Gross estate includes tax-exempt insurance.

Source: Compiled from Statistics of Income.

#### EXHIBIT B

TABLE No. 4.—Tax liability assuming interest from State and local government securities (a) tax-exempt and (b) taxable under present and proposed individual income-tax rates, for 25 selected individuals

Case	State and local interest	Taxable net income from other sources <sup>1</sup>	Total income	Present rates		Proposed rates <sup>2</sup>			
				Tax liability		Revenue loss from tax exemption	Tax liability		Revenue loss from tax exemption
				Interest exempt	Interest taxable		Interest exempt	Interest taxable	
1	221.9	601.9	823.8	424.2	595.7	171.5	504.4	699.6	195.3
2	226.2	207.9	444.1	126.4	301.2	174.8	157.0	364.9	207.9
3	260.4	148.9	409.3	87.0	276.8	189.8	106.2	334.9	228.6
4	230.9	1,337.5	1,568.4	909.2	1,181.6	182.4	1,151.1	1,354.3	208.2
5	226.9	1,081.0	1,307.9	796.8	975.8	179.2	925.3	1,125.0	199.7
6	215.0	147.8	362.8	83.6	241.8	158.0	105.4	264.0	188.6
7	349.5	144.2	493.7	82.6	339.6	257.0	101.1	407.9	306.8
8	820.7	835.6	1,656.3	605.0	1,251.6	446.6	710.0	1,432.2	722.2
9	162.7	249.8	412.5	158.1	279.2	121.1	194.5	337.7	143.2
10	351.7	275.1	626.8	175.9	442.7	266.8	216.2	525.7	309.5
11	330.7	373.6	704.3	249.9	503.0	253.1	303.5	594.5	291.0
12	773.0	765.1	1,538.1	549.4	1,157.7	608.3	647.4	1,327.6	680.2
13	668.7	305.9	974.6	198.6	712.8	514.2	243.3	831.7	588.4
14	817.4	288.9	1,106.3	186.6	817.2	630.6	229.0	948.2	719.3

<sup>1</sup> Exclusive of net long-term capital gains and losses.

<sup>2</sup> As included in Senate Finance Committee version of H. R. 7378, Victory tax excluded.

TABLE NO. 4—Tax liability assuming interest from State and local government securities (a) tax-exempt and (b) taxable under present and proposed individual income-tax rates, for 25 selected individuals—Continued

[In thousands of dollars]

Case	State and local interest	Taxable net income from other sources <sup>1</sup>	Total income	Present rates		Proposed rates <sup>2</sup>			
				Tax liability		Revenue loss from tax exemption	Tax liability		Revenue loss from tax exemption
				Interest exempt	Interest taxable		Interest exempt	Interest taxable	
15	394.6	376.6	771.2	250.7	553.2	302.5	304.7	651.9	347.3
16	296.5	603.0	899.5	423.2	653.0	229.8	503.7	764.6	260.9
17	404.3	160.1	564.4	94.8	395.3	300.5	116.0	471.4	355.4
18	316.3	915.1	1,231.4	666.8	915.8	249.0	780.0	1,058.3	278.3
19	313.4	278.7	592.1	179.2	416.6	237.4	220.0	495.7	275.8
20	356.5	135.4	491.9	76.1	336.9	261.8	94.8	407.6	312.8
21	1,083.7	4,321.4	5,405.1	3,280.3	4,251.3	871.0	3,776.9	4,730.6	953.7
22	172.6	170.7	343.3	102.2	227.2	125.0	125.2	276.8	151.6
23	226.2	166.9	393.1	99.5	264.5	165.0	121.9	320.6	198.7
24	314.8	331.7	646.5	217.5	457.3	239.8	265.5	542.5	277.0
25	424.8	218.9	643.7	136.2	386.3	230.1	184.9	558.8	373.9
Total	9,969.4	14,441.7	24,411.1	10,348.8	17,914.1	7,565.3	12,088.0	20,857.0	8,769.3

<sup>1</sup> Exclusive of net long-term capital gains and losses.

<sup>2</sup> As included in Senate Finance Committee version of H. R. 7378, Victory tax excluded.

Source: Income items from returns on Form 1040 for 1940.

#### EXHIBIT C

OPINION OF ASSISTANT ATTORNEY GENERAL  
SAMUEL O. CLARK, JR., ADDRESSED TO RANDOLPH  
E. PAUL

DEPARTMENT OF JUSTICE,  
Washington, April 14, 1942.

Hon. RANDOLPH E. PAUL,  
Tax Adviser to the  
Secretary of the Treasury,  
Washington, D. C.

DEAR MR. PAUL: On June 24, 1938, Hon. James W. Morris, Assistant Attorney General in charge of the Tax Division of the Department of Justice, transmitted to the Honorable Herman Oliphant, General Counsel of the Treasury Department, a comprehensive study of the constitutional aspects of the taxation of Government bondholders and employees. Copies of this study were also made available to the appropriate congressional committees.

You have requested our opinion on the constitutionality of the proposal by your Department to subject to Federal income tax the interest received hereafter on outstanding and future issues of State and municipal bonds, with special emphasis on legal developments subsequent to the publication of our study. We are pleased to comply with your request and submit the following views.

In our earlier study we expressed the following conclusion:

"It is believed that there can no longer be found in the decisions of the Supreme Court any rule of continuing authority which would raise a constitutional prohibition against applying the Federal income tax to State bondholders, officers, and employees."

You are no doubt aware that since that time the decisions of the Supreme Court on the question of constitutional tax immunity have all served to reinforce and confirm that conclusion. The trend toward a limitation of such immunity, which had developed when we published our study in 1938, has continued without interruption to the present date.

We are, of course, no longer concerned with the power of the Federal Government to tax the income of State officers and employees. The decision of the Supreme Court in *Graves v. New York ex rel. O'Keefe* (306 U. S. 466), and the enactment of the Public Salary Tax Act of 1939, have removed that problem from the field of controversy. Taxation by both State and Federal Governments of the salaries of public employees is now an accepted incident of our fiscal system. The only remaining question is whether the income received from State and municipal obligations may be subjected to Federal taxation. In our view, the answer is as clear and certain as the solu-

tion of any legal problem can ever be prior to a final determination of the precise issue by the Supreme Court. It is our considered opinion that the Congress does have the power to tax such income.

It is, of course, true that the Supreme Court concluded in *Pollock v. Farmers' Loan & Trust Co.* (157 U. S. 429; 158 U. S. 601) that a Federal tax could not validly be imposed upon income derived from municipal obligations. That decision was based upon the theory that a tax on income was a tax upon the source from which the income was derived. Thus, a tax on the income from municipal bonds was the equivalent of a tax upon the bonds themselves, and, therefore, an unconstitutional burden upon the power to borrow. However, this reasoning has been completely discredited in later opinions of the Supreme Court. With the destruction of the premise of the *Pollock* case, its conclusion must also fall.

"The theory, which once won a qualified approval, that a tax on income is legally or economically a tax on its source, is no longer tenable," said the Supreme Court in March 1939, in *Graves v. New York ex rel. O'Keefe* (306 U. S. 480). Less than a year earlier in *Helvering v. Gerhardt* (304 U. S. 405) the Court had sustained a Federal tax upon the salaries received by employees of the Port of New York Authority. The claimed immunity, if allowed, would in the Court's opinion (p. 424) have imposed "to an inadmissible extent a restriction upon the taxing power which the Constitution has granted to the Federal Government."

The imposition of a State tax upon the salary of a Federal employee was similarly held in the *O'Keefe* case not to place an unconstitutional burden upon the employing sovereign. *Collector v. Day* (11 Wall. 113), another landmark decision like the *Pollock* case, was thus overruled. The express denial in the *O'Keefe* case that a tax on income was the equivalent of a tax upon the source represented no new thought but was rather a reiteration of a principle which had been applied in the Court's prior decision in *New York ex rel. Cohn v. Graves* (300 U. S. 303) and in *Hale v. State Board* (302 U. S. 95). There, too, it had been recognized that "income is not necessarily clothed with the tax immunity enjoyed by its source."

The opponents of the pending proposal urge that it would produce an unconstitutional "interference" with State governments. Translated into practical terms, the interference complained of is merely the increased cost of future public borrowing which might be occasioned by the tax. It is significant that this increased cost involves no

discriminatory burden. Rather, it represents the effect of placing income from private and public sources upon the same plane of equality. The absence of any element of discrimination would be helpful in sustaining the constitutionality of the proposed tax.

Until the Supreme Court handed down its decision in *Alabama v. King & Boozer* on November 10, 1941 (314 U. S. 1), there was room for the view that, despite the decisions affecting public employees, a constitutional immunity from taxation might possibly be accorded to Government bondholders. Mr. Justice Stone had stated in the *O'Keefe* opinion (p. 486) that there was no basis "for the assumption that any \* \* \* tangible or certain economic burden is imposed on the government concerned as would justify" a decision that the tax upon the employee's salary was invalid. On the other hand, it is no doubt true that the issuing government would bear a part of the economic burden of an income tax imposed upon the bondholder. Nevertheless, this Department did not attach to the statement of Mr. Justice Stone the significance urged for it by those who have opposed the legislation now suggested. The recent decision in *Alabama v. King & Boozer* confirms our view. It is now clearly established that the validity of a tax upon bond interest will not be affected by the increased likelihood that the economic burden will in some measure be passed on to the Government.

The question in the Alabama case was whether in Alabama sales tax, which was to be collected from the buyer, was unconstitutional in its application to purchases made by a contractor engaged by the United States under a cost-plus-a-fixed-fee contract. It was quite clear, of course, that the entire burden of the tax would be borne by the Government. In fact, the Government had agreed with the contractor that State taxes, if valid, would constitute part of the cost of the project and would be assumed and borne by the Government. Hence there was no uncertainty as to the economic effect of the tax as in the earlier case of *James v. Dravo Contracting Co.* (302 U. S. 134), which involved a lump-sum contract. The Supreme Court nevertheless sustained the State taxation. In the course of its opinion the Court made the following observation (pp. 8-9):

"So far as such a nondiscriminatory State tax upon the contractor enters into the cost of the materials to the Government, that is but a normal incident of the organization within the same territory of two independent taxing sovereignties. The asserted right of the one to be free of taxation by the other does not spell immunity from paying the added costs, attributable to the taxation of those who furnish supplies to the Government and who have been granted no tax immunity."

Thus, the Supreme Court finally laid to rest the theory that an economic burden in terms of increased governmental costs invalidates a tax. The earlier opinions in *Panhandle Oil Co. v. Knox* (277 U. S. 218), and *Graves v. Texas Co.* (298 U. S. 393), were held untenable so far as they support the contrary conclusion.

A decision which supports State taxation of Federal cost-plus-a-fixed-fee contractors would operate at least equally to sustain a Federal tax imposed upon State bondholders. Both relationships rest upon contract; one involves the furnishing of supplies and services, the other money. The tax in each instance would increase the cost of governmental operations; in the case of the State tax on the Federal contractor, to the full extent of the tax exacted; in the case of the State bondholders, to some extent which is difficult of precise ascertainment. Paraphrasing the language of the Supreme Court in the Alabama case, we may therefore conclude that so far as a nondiscriminatory Federal income tax upon a holder of a State

obligation enters into the cost of borrowing, that is but a normal incident of the organization within the same territory of two independent taxing sovereigns.

What has been said thus far as to the power of the Federal Government to impose a tax upon income received from State obligations applies with equal force to all interest hereafter received whether upon future issues or upon outstanding obligations. No constitutional question as to the validity of a retroactive tax is involved. See *United States v. Hudson* (299 U. S. 498), and cases cited therein. The proposed tax reaches only future income, and is therefore entirely prospective in operation. It possesses the same constitutional validity as the income tax imposed by the Public Salary Tax Act of 1939, upon the income received after 1938 by all Federal judges, irrespective of the date of their appointment to office.

The assumption, which was formerly prevalent that interest received upon State securities was immune from Federal taxation, is analogous to the assumption of many years standing that under *Evans v. Gore* (253 U. S. 245), an income tax upon the salaries of Federal judges would be unconstitutional as a diminution of their compensation. The salaries of some Federal judges were made subject to the income-tax laws by the Revenue Act of 1932, which required that all compensation received by judges taking office after June 6, 1932, the effective date of the act, be included in gross income. Judges who had taken office prior to June 6, 1932, were thus given a statutory tax immunity. In the case of the bondholder, express statutory exemption was included in the act of October 3, 1913, and this provision was repeated in later acts. With the realization that tax immunity of judges who had taken office prior to June 6, 1932, was not a constitutional requirement, the Congress, by the Public Salary Tax Act of 1939, took the final step to remove it. The present proposal to tax future income of all State securities is therefore consistent with the procedure and objective of the Public Salary Tax Act of 1939. A further illustration of the application of the income-tax laws to future income arising out of transactions which were closed before the particular taxing provision was adopted may be found in *Burnet v. Wells* (289 U. S. 670). The grantor of an irrevocable trust was there held constitutionally taxable upon the trust income although the trust had been created before the enactment of the statute imposing the tax.

There is no constitutional basis for contending that income hereafter received upon outstanding State bonds must be free from Federal taxation because the obligations were issued and purchased on that implied or expressed understanding. The Federal Government was not a party to such contracts and the power of the Congress to enact a revenue measure is not fettered by any agreement between individuals or between an individual and a State. There are many illustrations of this proposition. Thus, in *Louisville & Nashville R. R. v. Mottley* (219 U. S. 467), an act of Congress which prohibited the enforcement of certain contracts for transportation was upheld, although applied to a preexisting contract. In *New York v. United States* (257 U. S. 591), an order of the Interstate Commerce Commission which increased an intrastate railroad rate was upheld even though the State charter had provided that a lesser rate should be charged by the company. See also *Norman v. B. & O. R. Co.* (294 U. S. 240).

It accordingly appears that no objection on constitutional grounds can be successfully raised against the proposal to tax the income hereafter received upon outstanding State obligations. Indeed, the assistant secretary of the Conference on State Defense has admitted that if Federal taxation of income arising out of future issues of State bonds is constitu-

tional, "there remains no constitutional bar to Federal taxation of the income received from the bonds now outstanding." (Tax Immunity and the Revenue Bond, by Daniel B. Goldberg, a printed memorandum distributed by the Conference on State Defense, March 1940.)

The Department's study of 1938, referred to above, reached a second and alternative conclusion that irrespective of the weakened vitality of the Pollock case and *Collector v. Day*, there is sound basis for a construction of the sixteenth amendment which would remove the immunity of the State bondholder and officer. We there examined at length the history of the ratification of the amendment and presented as exhibits the evidence which would support that conclusion. Accordingly, we refrain from entering into that phase of the problem in detail. One brief observation, however, seems appropriate.

At the hearings last month before the Committee on Ways and Means of the House of Representatives, reference was made to the fears expressed in 1910 by then Governor Hughes, of New York, that the proposed sixteenth amendment would authorize the taxation of interest received from State and municipal obligations. Reference was also made to the subsequent assurances of Senator Root and Senator Borah leading to the conclusion that the amendment was adopted by the legislatures of all the States with the views of the latter two in mind. The statements of Governor Hughes and of Senators Root and Borah, and of many others, were gathered and commented upon in our study.

It is significant that a large number of public officials (some agreeing and others disagreeing with the construction placed upon the amendment by Governor Hughes) urged that if the Hughes construction was correct, it furnished an additional ground for the adoption of the amendment. Among these were Frederick M. Davenport, to whom Senator Root's letter had been addressed, and Senator Brown, of Nebraska, who was the father of the joint resolution submitting the amendment to the States. It is also significant that the New York Legislature rejected the amendment in 1910 after the message of Governor Hughes, but ratified it subsequently under the administration of Gov. John A. Dix, who vigorously championed the broadest interpretation of the amendment.

The foregoing and an abundance of similar evidence permitted the conclusion to be reached in our study that the preponderant understanding of the States at the time of the ratification of the sixteenth amendment was that its adoption would in all probability carry with it the power to tax the income from State and municipal bonds.

We should like to reiterate, however, that the constitutionality of the proposed legislation does not depend exclusively upon the acceptance of our construction of the sixteenth amendment, namely, that the words "from whatever source derived" mean exactly what they say, and as so interpreted clearly embrace income from Government securities. With full confidence, the validity of our conclusion may rest upon the basic proposition previously discussed that no implied constitutional immunity from Federal taxation attaches to interest received from State and municipal obligations.

Very truly yours,

SAMUEL O. CLARK, Jr.  
Assistant Attorney General.

Mr. GEORGE. Mr. President, this question has been debated in the United States since before 1909. Thirty-three years ago last July the two branches of the Congress submitted the sixteenth amendment to the several States. Its ratification, of course, followed. During all the intervening years the question of the wisdom and power of taxing State

and municipal bonds has been before the American people. It is a question on which almost every American has his opinion. He certainly has had no lack of opinion in the press and from the platform. The debate in this body during the greater part of yesterday and all of today has been of an exceptionally high order.

Two questions were presented to the Finance Committee again this year, as they were also presented to the Ways and Means Committee of the other House:

First, whether the income derived from State and municipal bonds should be taxed; second, if it were not deemed wise or just to tax the income derived from such bonds outstanding, should the income from future issues of State and municipal bonds be taxed?

There is a question of power; that is quite true. It has often been debated. I myself have in the past entertained the view that the power of Congress to tax income derived from State and municipal bonds was involved in great doubt. I now have no serious doubt that the Supreme Court will hold that the Congress has the power to tax income derived from State and municipal bonds.

Mr. President, conceding the power, the question is whether it is wise to impose the tax on the income from State and municipal bonds. That is a debatable question. It is a question on which reasonable minds may differ. I grant that. I cannot believe that we have not the power, and I cannot believe that it is wrong to tax the income from State and municipal bonds. That, to my mind, seems to be the big question. I shall go as far as anyone will go in trying to maintain the business machine upon which the country must depend—and by that I mean the whole business machine, from the humblest individual to the largest organization which we permit to exist. I shall go as far as anyone will go in maintaining the business machine upon which we depend, upon which we shall depend when the war ends, and upon which the men who are fighting must depend in order to find a job when they return.

Mr. President, I think that is a short-sighted policy which would break down the business machine and which would let the returning soldiers find no work and no employment, but find a period of stagnation through which they would have to pass, after this war shall have ended.

So, Mr. President, paraphrasing the expression "Keep 'Em Flying," I am willing to "Keep Business Trying." It is essential to the life of America to keep business trying—that is, by giving to business a fair treatment, although not relieving it of its proper and fair burdens, of course.

Looking at the matter from the broad and national point of view, I cannot see why the position I have just stated is not the position which should be taken by the National Government, by every State, by every municipality, and by every taxing district. It will not break down the business machine, it will not destroy the opportunity for men to find jobs after the war ends and when the

soldiers come marching home, it will not break down the business machine, it will not destroy it, to tax income from every source from which men derive it; and to do so will not break down the cities, the States, or the municipalities, nor will it seriously interfere with their ability to finance themselves. With taxes as high as they are, and as high as they must go, there must inevitably be a great scramble to secure every outstanding tax-exempt bond or partially tax-exempt bond and every such bond which hereafter will be issued.

So, Mr. President, it seems to me that whatever may have been our judgment in the past, and however we may have been committed to it, the proposal to tax income derived from State and municipal bonds issued after January 1, 1943, not only squares itself with the principle of equity, which we like to think underlies all democracy and is in a sense the soul and spirit of democracy, but prevents anyone, whether he be relatively poor, only moderately rich, or very rich, from finding a shelter under which he could take refuge at a time when his country, in sheer defense of the American system of free institutions and of human liberty, is straining every nerve, taxing to the utmost every citizen, to find the money which, plus what we may be able to borrow and will be able to borrow without breaking down our economic system, will make it possible for us to finance ourselves through the war.

I feel that I should ask myself but one question, and that is, Is it right to tax the income from State and municipal bonds? If it is right, I am willing to let the Supreme Court say whether we have the power, for its decisions are sufficiently involved in doubt as to justify me in concluding that the Court will resolve the doubt in favor of the validity of such an act.

So, Mr. President, I express the hope that the Senate will vote down the amendment offered by the distinguished junior Senator from Ohio. Let us stop now at least the future issuance of State and municipal bonds the income from which will be exempted from our Federal income tax.

In this hour the Federal Government is supreme. It must always be able to protect its revenues against possible curtailment by means of bonds which may be issued in great volume before this war ends, or immediately upon its conclusion.

So, I think it right to avoid the possibility of such curtailment, and I believe that to do so will comport with the equity about which we talk, and which all of us really favor and support under our system of Government.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Alken	Bilbo	Burton
Austin	Bone	Butler
Bailey	Brewster	Byrd
Ball	Brooks	Capper
Bankhead	Brown	Caraway
Barbour	Bulow	Chandler
Barkley	Bunker	Chavez

Clark, Idaho	La Follette	Reynolds
Clark, Mo.	Langer	Rosier
Connally	Lee	Schwartz
Danaher	Lodge	Shipstead
Davis	Lucas	Smith
Downey	McCarran	Spencer
Doxey	McFarland	Stewart
Ellender	McKellar	Taft
George	McNary	Thomas, Idaho
Gerry	Maloney	Thomas, Okla.
Gillette	Maybank	Thomas, Utah
Green	Mead	Truman
Guffey	Millikin	Tunnell
Gurney	Murdock	Vandenberg
Hatch	Murray	Van Nuys
Hayden	Norris	Wagner
Herring	O'Daniel	Wallgren
Hill	O'Mahoney	Walsh
Holman	Overton	White
Johnson, Calif.	Pepper	Wiley
Johnson, Colo.	Radcliffe	Willis
Kilgore	Reed	

The PRESIDING OFFICER. Eighty-six Senators have answered to their names. A quorum is present.

The question is on agreeing to the amendment of the Senator from Ohio [Mr. BURTON].

Mr. GEORGE. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BARKLEY. Mr. President, may we have the amendment offered by the Senator from Ohio [Mr. BURTON] stated?

The PRESIDING OFFICER. The clerk will state the amendment.

The CHIEF CLERK. It is proposed to strike out on page 34, line 1, the words "before January 1, 1943," and beginning on line 23, page 34, to strike out all down to and including line 16 on page 38, as follows:

(3) For the purposes of clause (B) of paragraph (1) of this subsection:

(A) If the terms of an obligation issued before January 1, 1943, the maturity of which on the date of enactment of the Revenue Act of 1942 (hereinafter called "enactment date") or the date of issue, whichever is later, is later than December 31, 1942, are, after enactment date, changed so as to increase the principal amount or interest rate or to extend the maturity, then such obligation shall (as to interest accruing for any period after the date of the change or December 31, 1942, whichever is later) be considered as issued after such later date.

(B) In the case of an obligation issued after the enactment date and before January 1, 1943, such obligation shall (as to interest accruing for any period after December 31, 1942) be considered as issued after December 31, 1942, if any part of the proceeds of the issue of which the obligation is a part, or if any obligation of the issue, is devoted to the retirement or refunding of an obligation the maturity of which on enactment date was later than June 30, 1943. For the purposes of this subparagraph, June 30, 1943, shall be considered the maturity, on enactment date, of an obligation the interest on which ceases to run before July 1, 1943, by reason of such obligation being called for redemption in accordance with the terms thereof as they existed on enactment date.

(4) For the purposes of clause (B) of paragraph (1) of this subsection, if an obligation is issued after December 31, 1942 (hereinafter called "refunding obligation"), and if—

(A) The issue of which it is a part (hereinafter called "new issue") is issued for the purpose of refunding one or more obligations (hereinafter called "refunded obligations"); and

(B) All refunded obligations have the same exemption expiration date, as defined in subparagraph (J); and

(C) No obligations, other than those of the new issue, have been issued for the purpose

of refunding any of the refunded obligations; and

(D) The aggregate principal amount of the new issue is not in excess of the aggregate principal amount of the refunded obligations; and

(E) Interest on each of the refunded obligations ceases (by reason of such obligation being called for redemption in accordance with the terms thereof as they existed on enactment date, or the date of issue, whichever is later) to run upon a date not more than 7 months after the date upon which interest on the refunding obligation begins to run; and

(F) Interest on each of the refunded obligations, for the period at the end of which it ceases to run by reason of such call for redemption, is considered as interest on an obligation issued before January 1, 1943; and

(G) The refunding obligation, in its terms, states the exemption expiration date of, and identifies, the refunded obligations; and

(H) The interest rate on the refunding obligations for any period ending on or before the exemption expiration date of the refunded obligations is not higher than the interest rate which any of the refunded obligations had, or would (if such obligation had not been called for redemption) have had, for the corresponding period,

then the refunding obligation shall be considered as issued before January 1, 1943, as to so much of the interest as accrues for any period ending before or on the exemption expiration date of the refunded obligations, and shall be considered as issued after December 31, 1942, as to the remainder of such interest. For the purposes of this paragraph—

(I) Several obligations shall be considered as one issue, only if each is identical with all the others in maturity, interest rate, terms and conditions, and recitals, but the fact that the denominations differ, or that some are registered and some in coupon form shall be disregarded.

(J) "Exemption expiration date" means—

(1) With respect to a refunded obligation issued before January 1, 1943, the date of maturity which the obligation had on December 31, 1942;

(2) With respect to a refunded obligation issued after December 31, 1942, the date as of which interest thereon would (if the obligation had not been called for redemption) have ceased to be considered as interest on an obligation issued before January 1, 1943.

Mr. BURTON. Mr. President, merely that I may be sure that I understand correctly the parliamentary situation, and that the Senate does, I understand that the law now provides that income from all State and municipal securities shall be exempt from taxation. The committee proposes an amendment to limit that exemption to those securities which were issued or will be issued before January 1, 1943. My amendment is to strike out that date, and to strike out the limitation, and therefore to leave the situation as it is at present. If my amendment shall be voted up, the situation will remain as it is now, and municipal and State bonds will remain exempt.

The VICE PRESIDENT. The yeas and nays have been ordered, and the clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. THOMAS of Utah (when his name was called). I have a general pair with the senior Senator from New Hampshire [Mr. BRIDGES]. I transfer that pair to the senior Senator from Virginia [Mr.

GLASS], who would vote as I intend to vote. I vote "nay." I am advised that if present and voting the Senator from New Hampshire [Mr. BRIDGES] would vote "yea."

The roll call was concluded.

Mr. HILL. The Senator from Virginia [Mr. GLASS] and the Senator from Delaware [Mr. HUGHES] are absent from the Senate because of illness.

The Senator from Florida [Mr. ANDREWS], the Senator from Maryland [Mr. TYDINGS], and the Senator from Montana [Mr. WHEELER] are detained on official business.

The Senator from Georgia [Mr. RUSSELL] and the Senator from New Jersey [Mr. SMATHERS] are necessarily absent.

I announce the following pairs on the pending question:

The Senator from Maryland [Mr. TYDINGS], who would vote "nay," with the Senator from North Dakota [Mr. NYE], who would vote "yea."

The Senator from Montana [Mr. WHEELER], who would vote "nay," with the Senator from New Hampshire [Mr. TOBEY], who would vote "yea."

Mr. McNARY. The Senator from New Hampshire [Mr. BRIDGES], the Senator from North Dakota [Mr. NYE], and the Senator from New Hampshire [Mr. TOBEY] are necessarily absent.

The result was announced—yeas 52, nays 34, as follows:

#### YEAS—52

Austin	Gerry	Radcliffe
Bailey	Gillette	Reynolds
Ball	Gurney	Rosier
Bankhead	Hayden	Schwartz
Barbour	Hill	Smith
Bilbo	Holman	Spencer
Bone	Johnson, Calif.	Stewart
Brewster	Johnson, Colo.	Thomas, Idaho
Brooks	Lodge	Thomas, Okla.
Bunker	Lucas	Tunnell
Burton	McCarran	Van Nuys
Butler	McFarland	Wallgren
Caraway	McKellar	Walsh
Chavez	McNary	White
Connally	Maybank	Wiley
Davis	Millikin	Willis
Doxey	O'Mahoney	
Ellender	Overton	

#### NAYS—34

Alken	Green	Norris
Barkley	Guffey	O'Daniel
Brown	Hatch	Pepper
Bulow	Herring	Reed
Byrd	Kilgore	Shipstead
Capper	La Follette	Taft
Chandler	Langer	Thomas, Utah
Clark, Idaho	Lee	Truman
Clark, Mo.	Maloney	Vandenberg
Danaher	Mead	Wagner
Downey	Murdock	
George	Murray	

#### NOT VOTING—10

Andrews	Nye	Tydings
Bridges	Russell	Wheeler
Glass	Smathers	
Hughes	Tobey	

So Mr. BURTON's amendment to the amendment of the committee was agreed to.

The VICE PRESIDENT. The question recurs on the committee amendment on page 31, beginning in line 1, as amended.

The amendment, as amended, was agreed to.

Mr. GEORGE. Mr. President, I assume that the action just taken by the Senate will make it unnecessary to act upon two amendments which were passed over. The first is on page 528, "Section

509. Taxation of obligations of United States and its instrumentalities." That is a provision by which the United States would give consent to the taxation, under an income tax, of interest upon obligations, and dividends, earnings or other income from shares, certificates, stock, or other evidence of ownership of United States-owned corporations, and so forth. It would also apply to the second amendment passed over, beginning in line 13, on page 531, and ending in line 13, on page 532, which is section 510. Both amendments were passed over, but the action to be taken on them would seem to be determined by the vote already taken by the Senate. I therefore ask that the two amendments be disposed of today.

The VICE PRESIDENT. The question is on agreeing to the amendment beginning in line 6, on page 528, and ending in line 12, on page 531.

The amendment was rejected.

The VICE PRESIDENT. The question is on agreeing to the committee amendment, beginning in line 13 on page 531 and ending in line 13, on page 532.

The amendment was rejected.

The VICE PRESIDENT. The next committee amendment will be stated.

The next amendment was, on page 298, beginning in line 1, "Section 174. Temporary income tax on individuals."

Mr. McNARY. Mr. President, I call attention of the able Senator in charge of the bill and the Democratic leader to an understanding we had a few days ago.

Mr. GEORGE. Mr. President, I remember it; and if it is agreeable to the majority leader, I suggest that the Senate now take a recess until tomorrow.

#### STIMULATION OF OIL PRODUCTION

Mr. O'MAHONEY. Mr. President, I ask unanimous consent to have printed in the body of the RECORD a telegram which I received this morning from the Honorable Wayne Johnson, of the War Production Board, who sat in a hearing of the Committee on Public Lands and Surveys, which was considering ways and means of stimulating the production of oil in the United States. Mr. Johnson has suggested a possible amendment to the revenue act.

There being no objection, the telegram was ordered to be printed in the RECORD, as follows:

NEW YORK, N. Y., October 7, 1942.

Hon. JOSEPH C. O'MAHONEY,

Senate Committee on Public Lands:

After listening to the testimony taken before your subcommittee yesterday and after receiving a report on the testimony today, it seemed to me that the suggestions thus far submitted to bring about the necessary exploitation of existing prospective and unknown deposits of oil and gas were too general in their application. In order to avoid a similar threatening shortage in 1918 the Congress adopted a reward for the bringing in of new wells. To be sure the situation today due to critical materials and changes in the industry make the law and regulations as then adopted not entirely appropriate for the present situation but it gives a guiding principle. I wrote the regulations under the 1918 act and subsequently saw the administration of the act work perfectly and with modifications it could be equally or more effective today. My suggestion is: That in the

case of mines, oil and gas wells brought into production by the taxpayer on or after November 1, 1942, and not included in a square surface area of 40 acres having as its center the mouth of a well producing oil and gas in commercial quantities the depletion allowance shall be based upon the fair market value of the property at the date brought to production or within 30 days thereafter; such allowance in all the above cases to be made in accordance with the annual production limited to the estimated life of the property under rules and regulations to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary which allowance shall not be less than the 27½ percent otherwise provided in the present revenue act.

In the absence of a stronger showing than has already been made I am opposed to general price increases but I do think the areas now where production and consumption are practically in balance and the possibility of a shortage is more imminent such as the Rocky Mountain States and West Coast States that new production obtained after November 1, 1942, should receive a higher price due to greater costs and as a further stimulant to production. There is no accounting problem really involved in such a price increase because the runs to the pipe lines are always measured and the wells where oil is used on the property have settling tanks which are gaged each day.

Neither of these proposals would affect the Treasury's revenue because they have to do with new production so they would not impair the present estimated revenue returns, would stimulate the production of highly critical and much needed raw materials and produce additional revenue as well. These recommendations are given in brief and I would be glad to submit a detailed and completed written recommendation if the proposals are of interest to the committee and are not found objectionable by Government agencies and Henderson as I have not had a chance to consult with anyone about them.

Discussion of these principles certainly cannot harm the situation and it seems to me offers a tried solution without involving subsidies which are difficult to administer and general price increases which would be very difficult to justify.

WAYNE JOHNSON,  
War Production Board.

#### EXECUTIVE SESSION

Mr. BARKLEY. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

#### EXECUTIVE MESSAGE REFERRED

The VICE PRESIDENT laid before the Senate a message from the President of the United States submitting several nominations in the Army and the Army Specialist Corps, which was referred to the Committee on Military Affairs.

(For nominations this day received, see the end of Senate proceedings.)

#### EXECUTIVE REPORTS OF COMMITTEES

The following favorable reports of nominations were submitted:

By Mr. MCKELLAR, from the Committee on Post Offices and Post Roads:

Sundry postmasters.

By Mr. REYNOLDS, from the Committee on Military Affairs:

Sundry citizens for appointment in the Army Specialist Corps, established by an Executive order; and

Sundry officers for appointment, by transfer, and/or promotion in the Regular Army.

By Mr. BONE, from the Committee on Patents:

Vernon I. Richard, to be examiner in chief, Board of Appeals, United States Patent Office; and

Ernest F. Klinge, to be examiner in chief, Board of Appeals, United States Patent Office.

The VICE PRESIDENT. If there be no further reports of committees, the clerk will state the nominations on the calendar.

#### DIPLOMATIC AND FOREIGN SERVICE

The legislative clerk read the nomination of George Wadsworth, of New York, to act as diplomatic agent and consul general of the United States of America near the Government of the Republic of Lebanon, at Beirut, and near the Government of the Republic of Syria, at Damascus.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

#### POSTMASTERS

The legislative clerk proceeded to read sundry nominations of postmasters.

Mr. McKELLAR. I ask that the nominations of postmasters be confirmed en bloc.

The VICE PRESIDENT. Without objection, the postmaster nominations are confirmed en bloc.

#### THE NAVY

The legislative clerk read the nomination of John H. Towers, to be vice admiral for temporary service, to rank from October 6, 1942.

Mr. WALSH. I ask that the nomination be confirmed.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of John S. McCain, to be Chief of the Bureau of Aeronautics, with the rank of rear admiral, for a term of 4 years, effective upon the relinquishment of that office by Rear Admiral John H. Towers.

Mr. WALSH. I ask that the nomination be confirmed.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

#### THE MARINE CORPS

The legislative clerk proceeded to read sundry nominations in the Marine Corps.

Mr. WALSH. I ask that the nominations in the Marine Corps be confirmed en bloc.

The VICE PRESIDENT. Without objection, the Marine Corps nominations are confirmed en bloc.

That completes the calendar.

Mr. BARKLEY. I ask that the President be immediately notified of all nominations this day confirmed.

The VICE PRESIDENT. Without objection, the President will be notified forthwith.

#### RECESS

Mr. BARKLEY. As in legislative session, I move that the Senate take a recess until 11 o'clock tomorrow.

The motion was agreed to; and (at 4 o'clock and 56 minutes p. m.) the Senate took a recess until tomorrow, Friday, October 9, 1942, at 11 a. m.

#### NOMINATIONS

Executive nominations received by the Senate October 8 (legislative day of October 5), 1942:

#### APPOINTMENTS IN THE ARMY SPECIALIST CORPS

Leland Grisier Gardner, executive officer, Legislative and Liaison Division, War Department, Special Staff, \$5,600.

Hugh McKittrick Jones, principal personnel procurement officer, field service, Seventh Service Command, Army Specialist Corps, \$5,600.

Melvin James Snyder, principal administrative officer, Engineer Corps, Services of Supply, New York, N. Y., \$5,600.

#### CONFIRMATIONS

Executive nominations confirmed by the Senate October 8 (legislative day of October 5), 1942:

#### DIPLOMATIC AND FOREIGN SERVICE

George Wadsworth, to act as diplomatic agent and consul general of the United States of America near the Government of the Republic of Lebanon, at Beirut, and near the Government of the Republic of Syria, at Damascus.

#### IN THE NAVY

#### PROMOTION IN THE TEMPORARY SERVICE

John H. Towers to be vice admiral for temporary service.

#### IN THE MARINE CORPS

#### PROMOTIONS IN THE TEMPORARY SERVICE, IN THE MARINE CORPS

#### To be major generals

Emile P. Moses  
Harry Schmidt  
Ralph J. Mitchell

#### To be brigadier generals

Earl C. Long  
Pedro A. del Valle  
Francis P. Mulcahy  
Louis E. Woods  
Field Harris

#### POSTMASTERS

#### CALIFORNIA

Gilbert G. Vann, Arbuckle.  
Jacob Golden Land, Feather Falls.  
Paul W. McGrorty, McCloud.  
John Carlos Rose, Milpitas.  
Robert L. Turner, Mojave.  
Julia M. Ruschin, Newark.  
Lindsey L. Burke, Norwalk.  
Charles A. Turner, Oceanside.  
Icy June Murphy, Project City.  
George H. Treat, San Andreas.  
Louis J. McNeill, Tuolumne.

#### KANSAS

Clarence O. Masterson, Wilmore.

#### MONTANA

Oren D. Clement, Livingston.

#### OREGON

Euna Pearl Burke, Astoria.  
Robert H. Fox, Bend.  
Glen C. Smith, Independence.  
Winifred G. Wisecarver, McMinnville.

#### DEPARTMENT OF THE NAVY

John S. McCain to be Chief of the Bureau of Aeronautics, with the rank of rear admiral, for a term of 4 years.

## HOUSE OF REPRESENTATIVES

THURSDAY, OCTOBER 8, 1942

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

O Lord God Almighty, help us to accept our task without bitterness or censure, to be grateful for all the privileges we enjoy, and to face our world with confidence and with an earnest spirit. We pray, dear Lord, for emancipation from everything that holds men down, from the bondage of matter, purifying our souls as a temple, for freedom from egotism, keeping before us the Christ, the One whose character is manhood in magnitude. Grant unto us the grace to know that life is a fleeting shadow and enable us to discern that the true realm is in the life of the immortal soul.

Open the hearts of all our people to be more bountiful, to spare themselves less and less for the sake of others. We pray that our country may set the example to all the world not only in generosity and outward prosperity but in justice and in national honor, in nobility and truth, so that the cause of this world may become the cause of our Nazarene Teacher. In His holy name. Amen.

The Journal of the proceedings of yesterday was read and approved.

#### MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Frazier, its legislative clerk, announced that the Senate agrees to the amendments of the House to bills of the Senate of the following titles:

S. 2275. An act to amend section 10 of Public, No. 360, Seventy-seventh Congress, to grant national service life insurance in the cases of certain Army flying cadets and aviation students who died as the result of aviation accident in line of duty between October 8, 1940, and June 3, 1941;

S. 2679. An act to authorize the transportation of dependents and household effects of personnel of the Navy, Marine Corps, Coast Guard, and Coast and Geodetic Survey, incident to secret or confidential orders, and for other purposes.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 2471) entitled "An act to amend the act entitled 'An Act to prevent pernicious political activities', approved August 2, 1939, as amended, with respect to its application to officers and employees of educational, religious, eleemosynary, philanthropic, and cultural institutions, establishments, and agencies, commonly known as the Hatch Act," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. GEORGE, Mr. HATCH, and Mr. AUSTIN to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 2655) entitled "An act to amend the Judicial Code to authorize the Chief Justice of the United States to assign circuit judges to temporary duty in circuits other than their own," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. O'MAHONEY, Mr. CONNALLY, and Mr. DANAHER to be the conferees on the part of the Senate.

The message also announced that the Vice President had appointed Mr. BARKLEY and Mr. BREWSTER members of the joint select committee on the part of the Senate, as provided for in the act of Au-